

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA,) DOCKET NO. 5:15-cr-15-1
)
) VOLUME IV of IV
)
STEVEN W. CHASE,)
)
) Defendant.
)
_____)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD L. VOORHEES
UNITED STATES DISTRICT COURT JUDGE
SEPTEMBER 16, 2016

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P R O C E E D I N G S

FRIDAY, SEPTEMBER 16, 2016:

THE COURT: Okay. There was one question about the double jeopardy issue. The defendant submitted certain case law about it. The question that comes about would be whether there would be a double jeopardy problem if the jury should find defendant guilty of all counts but not Three; Three being the Advertising substantive count.

MR. JONES: Your Honor, may we -- the Government briefly address these cases?

THE COURT: Yes.

MR. JONES: Your Honor, we read the defense's cases last night, Your Honor. It's the Government's position that the issue with the case now is whether there has been sufficient evidence presented in this trial for a jury to convict the defendant on Counts One and Two.

My office has prosecuted several of these cases over the last three years where the defendant has been charged with, as to Count One The Enterprise, and as to Count Two Conspiracy To Advertise Child Pornography as has been charged in this case, Your Honor. *U.S. versus Defoggi* is one out of the District of Nebraska; *U.S. V Wise*, Western District of Louisiana; *U.S. v Mosher*, Central District of Illinois, and also the *Grovo* case, which your clerk cited in the jury instructions, Your Honor, which is a Ninth Circuit case -- a

1 published opinion that was published a couple of months ago,
2 Your Honor. All of these cases charged both the enterprise
3 and the conspiracy to advertise. And the jury was charged on
4 both these counts, Your Honor. The United States admits
5 that --

6 THE COURT: I'm not saying we wouldn't charge on it.
7 I'm saying the question would be whether it would be a double
8 jeopardy issue --

9 MR. JONES: It --

10 THE COURT: -- depending on what the jury did. And
11 we could handle that just by instructions on the verdict
12 sheet, you know, if you find this and that and don't -- don't
13 do Count Two, something like that.

14 MR. JONES: What has happened in these four -- five
15 cases I just mentioned, Your Honor, is that double jeopardy
16 doesn't attach until judgment, a punishment has been entered,
17 Your Honor. So it's our position that prior to sentencing, as
18 has been done in previous cases, the United States either
19 moves for Count Two -- if the defendant is convicted of Counts
20 One and Two -- we will move for Count Two to be dismissed. Or
21 the Court on its own extent at that point could just vacate
22 Count Two, Your Honor. But that doesn't become an issue until
23 the sentencing phase of the trial, Your Honor, not during this
24 phase, Your Honor.

25 Even in the -- you know, even if he's -- that's if

1 he's found guilty on both counts, Your Honor. So that's
2 something that should be taken up prior to judgment at the
3 sentencing.

4 Even the two cases, the *Hawthorne* case, the Eighth
5 Circuit case the defendant brought up to support his motion,
6 Your Honor, that was -- double jeopardy didn't attach until
7 the conviction -- he was convicted and sentenced, you know,
8 based on some of the same conduct. So that's when the double
9 jeopardy attaches, you know, after the sentence or the
10 judgment.

11 We submit that after the trial, if the defendant is
12 convicted on both counts, and prior to sentencing, you know,
13 the United States will either move to dismiss the lesser
14 included offense or the Court in its discretion can vacate
15 Count Two at that time.

16 THE COURT: All right. Anything from the defendant?

17 MR. ADOLF: Judge, I think the confusion may arise
18 from the fact that a lot of these cases, or most of these
19 cases are dealing with the issue after it's already happened
20 on 2255 and so forth. And then the question becomes if it's a
21 sufficient remedy or not to just dismiss one of the counts.
22 That's what most of the case law seems to be about because
23 that's when it comes up. Otherwise, if the jury's instructed
24 correctly then it doesn't come up because it's not an issue.

25 And I question the wisdom that the Government

1 suggests of doing something that case law says is error on the
2 theory that it ultimately can be made harmless later on.

3 THE COURT: Well, I'm going to adopt your position
4 on that and we can handle it by how we word the verdict sheet.

5 MR. ADOLF: Thank you, Your Honor.

6 THE COURT: Let me see if I can pose something in a
7 similar context, perhaps the same question.

8 If there's a not guilty on Count Three, is there any
9 double jeopardy?

10 MR. ADOLF: I'm sorry, is Your Honor addressing
11 Count Three or Count Two? Because Count Two is the
12 Advertising Conspiracy.

13 THE COURT: Two is the Conspiracy --

14 MR. ADOLF: Right.

15 THE COURT: -- to Advertise. Three is the
16 substantive -- I mean, Advertising count.

17 MS. RANDALL: That's a law school question, Your
18 Honor, to walk through this one.

19 THE COURT: So another way to put that would be, you
20 know, yesterday we talked about the *Blockburger* case defining
21 the prejudice analysis. And so today we might phrase it, if
22 Three is not a predicate offense, that is, if there's a not
23 guilty on Count Three, you still have the same analysis under
24 *Blockburger*.

25 Well, if the parties don't have anything further to

1 say about it, the Court will rule on it.

2 MR. ADOLF: I'm sorry, Your Honor. I was waiting
3 for -- I was deferring to the Government first. But I do -- I
4 could just briefly say something about that.

5 I think as I understand what the Court is talking
6 about and what my concern is, it sort of echos what I was
7 talking about yesterday. Which is that the definition of an
8 advertisement that the Government has proposed is so broad
9 that it basically can include any communication even among a
10 small group of people inviting someone to commit a crime, in
11 particular, the crime of distributing child pornography or
12 advertising child pornography.

13 And that's defined broadly enough so that if any
14 communication can do that, that's the same as what's required
15 for a conspiracy. Which is that communicating to someone,
16 let's commit a crime together, and that person agreeing. So
17 the jury can't find one without the another. There's no way
18 to distinguish between the acts proving one and the acts
19 proving the other because they are essentially defined the
20 same way. And, in particular, the two counts are totally
21 co-extensive, as far as dates.

22 So it is -- there is any conspiracy, which is to
23 say, any agreement to commit a crime such as advertising is
24 going -- any advertisement, as the Government has defined it,
25 is going to be a component part also of the conspiracy.

1 There's no way to convict of one without the other. So I do
2 think that presents a double jeopardy problem.

3 MS. RANDALL: Your Honor, I think if you look at
4 just using the Blockbuster -- *Blockburger* -- excuse me --
5 *Blockburger* test and just looking at a straight element
6 analysis and comparing them. If the jury were to find that
7 the Government did not prove the advertisement charge and they
8 said so and there's in a special verdict form that -- under
9 the enterprise offense -- that they were not convicted based
10 on that, then the elements would not match the conspiracy to
11 advertise. Because they did not find that the Government
12 acted in concert with other people or form an agreement with
13 other people to advertise child pornography.

14 So if that agreement was not made for the enterprise
15 it couldn't have been -- then it's different -- but they did
16 find that it was made for the conspiracy, it seems like the
17 elements would -- there would be a different element there
18 somewhere for them not to convict on one and then the other.

19 THE COURT: All right. Thank you.

20 All right. We will have a verdict sheet that will
21 be informative on this point and you all can look at that and
22 that will be the subject of your argument to the extent you're
23 arguing along those lines.

24 Anything further to be addressed about these
25 instructions that we didn't cover yet?

1 MR. ADOLF: Not from the defense, Your Honor.

2 MS. RANDALL: Your Honor, in reviewing the
3 instructions one last time last night now that all the
4 evidence has been entered there were two that appeared to
5 maybe not be applicable anymore. One of them being page 14,
6 which was impeachment, inconsistent statements, or conduct. I
7 don't think there was any use of a prior statement to impeach
8 any of the witnesses. So I don't think that one would be
9 applicable.

10 THE COURT: Any objection to removing that?

11 MR. ADOLF: Judge, I'm trying to remember,
12 mechanically, when I confronted Mr. Browning about his prior
13 statement to Agent Alfin. I'm not sure if he was really
14 impeached or if I refreshed his recollection with it as it
15 turned out.

16 MS. RANDALL: He admitted that he did say --

17 MR. ADOLF: Right --

18 MS. RANDALL: -- that it was --

19 MR. ADOLF: Right.

20 MS. RANDALL: -- that there was information about a
21 person in Texas, which I think was what --

22 THE COURT: I have no problem leaving it in or out.

23 MR. ADOLF: I think we can leave it out, Your Honor.
24 We can take it out.

25 THE COURT: All right. We'll just take it out.

1 MS. RANDALL: And then the other one, Your Honor,
2 which -- and I just don't know if this would apply to
3 Mr. Browning either, is the -- the title is the "Credibility
4 of Witnesses, Prior Conviction." Normally I think of that as
5 applying when you talk to someone about their criminal
6 history. I didn't know if that would apply in this case
7 because Mr. Browning has pled guilty. If that's why that is
8 in there or not. Because no one else had a prior conviction
9 that was mentioned.

10 THE COURT: Well, it wasn't what you might normally
11 consider a prior but it's a felony. So I might be able to
12 make that clear to the jury.

13 MS. RANDALL: And then regarding the other -- were
14 the other changes that we discussed yesterday, then, all made
15 about -- just so I know what I'm arguing about the interstate
16 facility. Was that sort of definition added and everything to
17 the final jury instructions?

18 THE COURT: Well, page 60, of course, is the
19 definition of interstate or foreign commerce page in the
20 original pagination.

21 MS. RANDALL: Right, but there are two
22 mechanisms for violating the statute --

23 THE COURT: Right.

24 MS. RANDALL: -- either in or affecting commerce or
25 using a means or facility of interstate or foreign commerce.

1 So we were asking for a definition of the second way of
2 violating the statute.

3 THE COURT: I think we came up with that.

4 MS. RANDALL: Okay. We just haven't seen that final
5 copy so I wanted to make sure before I argued to the jury.

6 THE COURT: Right. Well, we'll take a brief recess.
7 We'll just take five to ten minutes for now, and hopefully
8 we'll be able to give you a hard copy of the verdict form that
9 will be used, and a copy of the substantive part of the
10 instructions containing the modifications from yesterday.

11 (Recess at 9:37 until 9:56.)

12 THE COURT: I believe the parties have a copy of the
13 verdict form.

14 MS. RANDALL: Yes, Your Honor.

15 MR. ADOLF: Yes, Your Honor.

16 THE COURT: Of course that includes the predicate
17 offenses on page 2 as a special interrogatory.

18 MR. JONES: Can the Government --

19 THE COURT: I believe you have a copy of the final
20 instructions also.

21 MR. JONES: Yes, Your Honor.

22 THE COURT: So we'll bring the jury in and I will
23 give them the --

24 MR. JONES: Your Honor, just briefly before we bring
25 the jury in. The Government just had a couple of issues with

1 the special interrogatory we wanted to address.

2 THE COURT: All right.

3 MR. JONES: One is just a minor change on the
4 Advertising Child Pornography, should be between on or about
5 August 19, 2014 and not April 14th. As the indictment charges
6 August 19th to March 4, 2015.

7 THE COURT: All right. Are you looking at the
8 verdict form or --

9 MR. JONES: The verdict form. The Special
10 Interrogatory, page 2 of the Verdict form.

11 THE COURT: Page 2. Okay. It's August.

12 MR. JONES: August 19, 2014, Your Honor.

13 THE COURT: You talking about the first --

14 MR. JONES: The first, yes.

15 THE COURT: -- item advertising child pornography
16 between on or about --

17 MR. JONES: Should be August 19, 2014.

18 THE COURT: All right. Thank you.

19 MR. JONES: And the second thing, Your Honor, the
20 Government submits that the first -- the second to the last
21 sentence should be taken out "if you found that the offense of
22 advertising child pornography was a predicate offense, skip
23 Count Two and continue to Count Three."

24 Your Honor, if for some reason the case were to go
25 up on appeal and there is any -- maybe an issue with the

1 enterprise charge, then we would still have the conspiracy to
2 advertise. So we just admit just deleting that sentence
3 altogether.

4 MS. RANDALL: Basically, Your Honor, we feel like
5 the interrogatory, by having them check which block, is going
6 to answer our question as to whether there's a double jeopardy
7 issue.

8 MR. JONES: So it would be --

9 MS. RANDALL: If you instruct them not to go to
10 Count Two and then for some reason Count One is overturned or
11 vacated by the Court of Appeals, they find for some reason
12 that the Government didn't prove it or the statute turns out
13 to be unconstitutional or some other argument is made, when it
14 comes back for resentencing at that point, Judge, you should
15 be allowed to impose a sentence on Count Two because the
16 double jeopardy issue no longer exists. If they're not
17 allowed to consider it we won't know what they would have done
18 on Count Two.

19 THE COURT: What do you propose to do? Just delete
20 that sentence.

21 MS. RANDALL: Yes, Your Honor.

22 MR. JONES: Yes, Your Honor.

23 MS. RANDALL: We would just leave the blocks for
24 them to check because then we would know what they were
25 convicting him on, and Your Honor would know if there was an

1 actual double jeopardy issue.

2 MR. ADOLF: Judge, I think the same case law that
3 the Government cited in support of the harmlessness of the
4 error also said that -- because there are plenty of cases that
5 say that in that exact situation, let's say where the jury
6 convicts on Count One and then is told not to consider the
7 lesser offense. And if that goes up on appeal and it turns
8 out there's a defect in Count One, if that defect would not
9 have infected Count Two then the appellate court can
10 absolutely substitute Count Two, and there is case law to that
11 effect. So it's the same harmless error problem.

12 And I think -- I'm not sure how it is that the
13 Government thinks that the jury checking the box about what
14 they -- that they found a particular count obviates any kind
15 of double jeopardy problem. I think that's what causes the
16 double jeopardy problem.

17 THE COURT: All right.

18 MS. RANDALL: I just think we know there's a double
19 jeopardy problem if we check it.

20 THE COURT: I'll overrule the objection and we will
21 leave it as it is. Is that everything?

22 MR. ADOLF: Judge, just for the record. I don't
23 know if it's necessary or not, but renewing my objection to
24 the order that the counts are considered in and the use of --
25 and the use of the advertising count and the possession count,

1 since those dates are co-extensive as being potentially
2 different incidents, I think I argued on Rule 29 since they
3 are all the same date they have to be the same incident and
4 therefore only one of them could be considered as a predicate.
5 I understand, Your Honor, denied that in the context of the
6 Rule 29, but I'm renewing that objection for the purpose of
7 objecting to the instructions and the special interrogatory.

8 THE COURT: All right, sir, it will be overruled.

9 MR. ADOLF: Thank you.

10 THE COURT: May we have the jury, please?

11 (The jury was returned to the courtroom.)

12 THE COURT: Good morning, members of the jury.

13 THE JURY: Good morning.

14 THE COURT: We'll proceed as we talked about
15 yesterday. And as I indicated earlier, we'll go into jury
16 instructions, I'll give you part of them now and then we will
17 have the arguments of the attorneys and then we'll have the
18 balance of the instructions before it is time for
19 deliberation.

20 So now that you have heard the evidence, and you
21 will soon hear the arguments of counsel, I will instruct you
22 as to the law that applies to this case.

23 As I say, I'll give you part of it at this time.

24 I will first instruct you on some rules for jury
25 consideration of cases of this type, including how to assess

1 the credibility of witnesses, then I will discuss the offenses
2 charged in the particular case after the arguments. At that
3 time I will also give you the elements of each charge and then
4 give you some directions to guide you in your deliberations.

5 Can all of you hear me okay?

6 THE JURY: (Indicating.)

7 THE COURT: It is your duty and your responsibility
8 in the trial to find the facts. You may find those facts only
9 from the evidence which was presented during this trial. That
10 consists of the testimony of the witnesses who have been
11 called, and sworn and testified in your presence, the exhibits
12 which have been admitted into evidence by the Court, and
13 that's what you base your decisions on.

14 In reaching your decision as to the facts, it is
15 your sworn duty to follow the law as the Court instructs you.
16 You will apply the law given to you by the Court to the facts
17 which you find from the evidence, and reach a verdict
18 accordingly.

19 Now keep in mind that the Court's instructions as
20 I'm giving them to you will be available to you in hard copy
21 in the jury room and also be on the video or digital means in
22 the jury room. So if you wanted to look at any part of my
23 instructions again, you could simply do it readily in the jury
24 room during deliberations.

25 Now counsel may refer to some of the governing rules

1 of law in their arguments. If, however, any difference
2 appears to you from the law as stated by counsel and that
3 given to you by the Court, obviously, you would be following
4 the instructions of the Court.

5 You are not to single out any one instruction alone
6 as stating the law, but must consider all of the instructions
7 as a whole. And you may not substitute or follow any personal
8 or private notion or opinion as to what the law is or ought to
9 be.

10 You are required to perform these duties without
11 bias, or prejudice, or sympathy for or against any party. The
12 law does not permit jurors to decide cases on the basis of
13 bias, or prejudice, or sympathy or any perceived public
14 opinion or any basis other than on the basis of the facts and
15 the law that arise in this particular case.

16 Now this case involves seven charges brought by a
17 Second Superseding Bill of Indictment which the Court will
18 refer to simply as the "Bill of Indictment."

19 The first charge may be encapsulated by the words
20 "Engaging in a Child Exploitation Enterprise" and that comes
21 under the Section 2252A(g). That's Count One, Child
22 Exploitation Enterprise is the charge.

23 The second charge is Conspiracy to Advertise Child
24 Pornography, in violation of 18 U.S. Code 2251(d) and (e),
25 that's Count Two.

1 The third count is Advertising Child Pornography, in
2 violation of 18 U.S. Code 2251(d).

3 The next three charges are Transporting or Shipping
4 Child Pornography, in violation of Section 2252A(a)(1), and
5 that's Counts Four through Six.

6 And, finally, the seventh charge is Possession of
7 Child Pornography, in violation of 18 U.S. Code
8 2252A(a)(5)(b), that's Count Seven.

9 So you are instructed that an indictment, the one
10 which brings these charges, is but a formal method of accusing
11 the defendant of a crime. In this case there are seven crimes
12 charged. It is used to inform the defendant of the charges
13 against him and bring him to trial. It is not evidence of any
14 kind against the defendant, nor does it permit any presumption
15 or inference of guilt. The indictment is not consistent
16 either with guilt or lack of guilt. It simply puts that
17 question at issue for your decision.

18 At the arraignment, the defendant entered a plea of
19 not guilty to these charges and thereby made a general denial
20 of all the accusations contained in the Bill of Indictment.

21 So it is up to you, the jury, to decide if, in fact,
22 the defendant is guilty or not guilty of the charges outlined
23 in the Indictment.

24 Now every defendant in a criminal case, and of
25 course the defendant here, is presumed to be innocent of a

1 crime at the outset, and this presumption continues throughout
2 the course of the trial. This presumption will end as to any
3 count that you are considering, only if you reach the jury
4 room and arrive unanimously at the conclusion, if you do, that
5 the Government has shown to your satisfaction that the
6 defendant is guilty beyond a reasonable doubt as to that count
7 of the indictment. This burden on the Government does not
8 change at any time during the course of the trial. The
9 presumption of innocence in favor of the defendant is not a
10 mere formality to be disregarded by the jury at its pleasure.
11 It is a substantive part of our criminal law. Accordingly,
12 the Government must prove each of the elements of the crimes
13 charged beyond a reasonable doubt before there could be a
14 conviction on any particular count or counts.

15 Now since, at the outset, the law presumes the
16 defendant to be innocent, the defendant begins the trial with
17 a clean slate. The presumption of innocence is, therefore,
18 sufficient to acquit the defendant unless overcome by evidence
19 of guilt proven beyond a reasonable doubt.

20 The law permits only the evidence actually presented
21 to the jury to be considered in support of the charge and any
22 charge against him. If the evidence is sufficient to overcome
23 the presumption of innocence, and to convince you beyond a
24 reasonable doubt of the guilt of the defendant as to a
25 particular charge or charges, then it would be your duty to

1 find him guilty accordingly. But if you have a reasonable
2 doubt as to this guilt on any charge or charges, then it would
3 be your duty to give him the benefit of that doubt and acquit
4 him of any such charges.

5 Now, the Government has the burden of proving to you
6 its contentions and each element of the offenses charged
7 beyond a reasonable doubt.

8 The term "reasonable doubt" means just what it says.
9 It is a doubt based upon reason and common sense. Its meaning
10 is no doubt self-evident and understood by you, and the Court
11 will not attempt to define it any further.

12 There are two types of evidence which a jury may
13 properly assess in determining whether the Government has met
14 its burden of proof as to an offense. One is direct evidence,
15 such as testimony of an eyewitness. The other is
16 circumstantial evidence, proof of a chain of circumstances
17 pointing to the commission of the offense.

18 Circumstantial evidence is evidence of facts or
19 circumstances from which the existence or nonexistence of
20 other facts in controversy may be inferred. As a general
21 rule, the law makes no distinction between direct and
22 circumstantial evidence, it simply requires that, before
23 convicting a defendant, the jury must be satisfied of the
24 guilt of that defendant beyond a reasonable doubt from all the
25 evidence in the case.

1 It can be said that circumstantial evidence may in
2 some cases point to a wholly incorrect result. Yet, this is
3 equally true of testimonial evidence. With both types of
4 evidence, you are asked to weigh the chances that the evidence
5 correctly points to the establishment of the facts against the
6 possibility of inaccuracy or ambiguous inferences. With both
7 types of evidence, you must use your experience with people
8 and events in weighing the evidence.

9 A certain chart or summary and perhaps more than one
10 has been prepared by the Government and shown to you. These
11 have been admitted into evidence during the trial for the
12 purpose of explaining facts that are allegedly contained in
13 books, records, or other documents which are also in evidence
14 in the case.

15 Usually this is done when there is voluminous
16 evidence.

17 You may consider the charts and summaries such as
18 you may recall from the evidence as you would any other
19 evidence admitted during the trial and give them such weight
20 as you feel they deserve, considering the way they are
21 prepared and any testimony you heard about how they came
22 about.

23 Now, members of the jury, where there's a question
24 as to what took place you must determine the credibility of
25 the witnesses. The Court instructs you that you are the sole

1 judges of the credibility of the witnesses and the weight that
2 their testimony deserves. While there's no absolute or
3 arbitrary guide or measure by which you determine the
4 truthfulness or untruthfulness of a witness, the Court will
5 point out to you certain general principles which you should
6 consider as you pass upon this phase of the case. Now among
7 the things you may properly consider are:

8 Whether the witness has any motive or reason for
9 being truthful or untruthful; the witness' interest, if any,
10 in the outcome of the case; whether there has appeared from
11 the witness's attitude or conduct any bias or prejudice or
12 feeling which may cause that person's testimony to be
13 influenced; whether the testimony bears the earmarks of
14 truthfulness; to what extent, if any, the testimony is
15 corroborated or confirmed by other testimony which is not
16 questioned, or to what extent, if any, it's corroborated or
17 confirmed by known or admitted facts; you may also consider
18 the intelligence and mental capacity of a witness and the
19 witness' opportunity to have accurate knowledge of the matters
20 to which the person testified.

21 So I instruct you that you may believe all that a
22 witness says or none, you may believe part and disbelieve
23 part. You may consider the interest which the witness may
24 have in the verdict, the demeanor of the witness on the stand,
25 the reasons for his or her testimony, and the means by which

1 the witness may know the things to which he or she has
2 testified. If you find a witness is interested in your
3 verdict, it is your duty to scrutinize that testimony closely,
4 but after you've done so and if you find he or she is telling
5 the truth in whole or in part, then you would give that
6 testimony the same weight you would that of a disinterested
7 witness. In short, it is your duty to find the truth of this
8 matter.

9 The Defendant, Steven W. Chase, has elected not to
10 testify in this case. The Court instructs you that the
11 defendant has a constitutional right not to take the stand and
12 testify and not to speak at all or offer any evidence, the
13 burden of proof being entirely upon the Government. Thus, you
14 must draw no adverse inference of any kind from his exercise
15 of his privilege not to testify. This right is a fundamental
16 one in America's criminal law and one which cannot be
17 disregarded by the jury at its pleasure.

18 Now you heard the testimony of a witness who has
19 been convicted of a felony. That is, you heard Witness
20 Browning indicate that he had pled guilty to a charge in the
21 indictment here. Now, that could be a crime for which a
22 person may receive a prison sentence of more than one year.
23 Prior conviction of a crime that is a felony is one of the
24 circumstances that you may consider in determining the
25 credibility of a witness. While the testimony of a witness

1 maybe discredited or impeached by evidence showing that he has
2 been convicted of a felony, it is the sole and exclusive right
3 of the jury to determine the weight to be given to any prior
4 conviction as impeachment and the weight to be given to the
5 testimony of someone who has previously been convicted of a
6 felony.

7 Now, the testimony of an alleged accomplice, that
8 is, someone who said that he participated in the commission of
9 a crime must be examined and weighed by the jury with greater
10 care than the testimony of a witness who did not so
11 participate.

12 David Lynn Browning may be considered an alleged
13 accomplice in this case.

14 The fact that an alleged accomplice has entered a
15 plea of guilty to the offense charged is not evidence of the
16 guilt of any other person, including the defendant.

17 The jury must determine whether the testimony of an
18 accomplice has been affected by self-interest, by an agreement
19 made with the Government, or by his own interest in the
20 outcome of the case, or by prejudice against the defendant.

21 You have heard the evidence that witness David Lynn
22 Browning has pled guilty to the crime which arose out of the
23 same events for which he is on trial here -- or for which,
24 rather, the defendant is on trial. You must not consider that
25 guilty plea as any evidence of this defendant's guilt. You

1 may consider that witness's guilty plea only for determining
2 the truthfulness that you would attribute, or lack of it, and
3 whether you would rely on that testimony.

4 The rules of evidence ordinarily do not permit
5 witnesses to testify as to their own opinions or their own
6 conclusions about important issues in a trial.

7 An exception to this rule exists as to those
8 witnesses who are described as "expert witnesses."

9 An "expert witness" is someone who, by education or
10 experience, may have become knowledgeable in some technical,
11 scientific, or very specialized area. If such knowledge or
12 experience may be of assistance to you in understanding some
13 of the evidence or in determining a fact, then an "expert
14 witness" in that area may state an opinion as to a matter in
15 which he or she claims to be an expert.

16 You should consider the expert opinions received in
17 evidence in this case, that is, the testimony of Daniel
18 O'Donnell concerning conducting investigations into online
19 child exploitation websites; the testimony of Ray Hus
20 concerning digital media forensics; and the testimony of Jon
21 Shumway concerning digital media forensics, and give that
22 testimony such weight as you think it deserves.

23 You should consider the testimony of the expert
24 witness just as you consider other evidence in the case. If
25 you should decide that the opinion of the witness is not based

1 upon sufficient education or experience, or if you should
2 conclude that the reasons given in support of the opinion are
3 not sound, or if you should conclude that the opinion is
4 outweighed by other evidence, then you may disregard that
5 opinion in part or in its entirety.

6 As I have told you before, you are the sole judges
7 of the facts.

8 Now, during the trial you heard testimony from those
9 Government witnesses I just mentioned, O'Donnell, Shumway, and
10 Hus, and these were qualified as experts, but they were also
11 involved in the investigation into the PlayPen website. To
12 the extent these witnesses, or any of them, rendered opinions
13 regarding investigations into online child exploitation
14 websites and digital media forensics generally, including
15 opinions about the t-o-r network, terminology used on online
16 child exploitation websites, and the copying of digital media
17 images, you should treat this testimony as expert testimony.
18 To the extent these witnesses also provided testimony about
19 their involvement in the investigation into the PlayPen
20 website, this testimony is not expert testimony and should be
21 considered fact witness testimony, just as any other witness.

22 Your decision on the facts of this case should not
23 be determined by the number of witnesses testifying for or
24 against any party. You should consider all the facts and
25 circumstances in evidence to determine which of the witnesses

1 you choose to believe or not to believe.

2 Keep in mind that the defendant is not on trial for
3 any offense not charged in this Bill of Indictment. Nor
4 should you draw any inference concerning guilt or lack of
5 guilt of any crime charged in this case based on evidence, if
6 there was any, of the defendant's involvement with any other
7 offense not charged in this Bill of Indictment.

8 You must not convict the defendant unless the
9 Government has proven beyond a reasonable doubt each and every
10 essential element of the particular crime charged in the Bill
11 of Indictment against him which you are considering.

12 Now, you may use the notes if you took any during
13 the trial. However, because many courts do not permit
14 notetaking by jurors, a word of caution is in order.
15 Frequently, there is a tendency to attach too much importance
16 to what a person writes down. You are instructed that your
17 notes are only a tool to aid your own individual memory, and
18 should not be substituted for your memory. Moreover, you
19 should not compare your notes with those of other jurors in
20 determining the content of testimony or in evaluating the
21 importance of any evidence. Remember, your notes are not
22 evidence, and are by no means a complete outline of the
23 proceedings or a list of the highlights of the trial. Your
24 memory should be your greatest asset when it comes to this
25 case in deciding it. If your memory should differ from your

1 notes, then you would rely on your memory and not on your
2 notes.

3 Now the punishment provided by law for the offense
4 charged in the various ones in the indictment, should there be
5 a verdict of guilty of any offense, is a matter exclusively
6 within the province of the Court. The idea of punishment
7 should never be considered by the jury in any way in arriving
8 at an impartial verdict as to the guilt or innocence of the
9 accused as to any count or counts.

10 Thank you very much for your attention to these
11 matters. We will now move to arguments.

12 Under our rules the Government has the opportunity
13 to make an opening statement or, rather, a summation statement
14 to you at this time. And then the defendant will have an
15 opportunity to present arguments on behalf of the defendant
16 and, of course, defense counsel may also refer to arguments
17 made by the Government in reply. And, finally, the Government
18 will have a brief opportunity to respond to defense arguments.

19 Is the Government ready to proceed?

20 MS. RANDALL: We are, Your Honor.

21 THE COURT: You may do so.

22 MS. RANDALL: Thank you.

23 Ladies and gentlemen of the jury, over the past few
24 days you have learned about one of the darkest corners of
25 what's known as the Dark Web. A place where sexual abuse of

1 children is celebrated and even adored by hundreds of
2 thousands of users; that place was PlayPen.

3 PlayPen was a website dedicated to people who wanted
4 to share and seek out child pornography. It was a website
5 that was created and maintained from August of 2014 until
6 February 20, 2015, by a user named PlayPen. So who exactly is
7 PlayPen? Well, despite his attempts to hide and even mislead
8 others on the website and through his records, there is clear
9 evidence that PlayPen is only one man, the Defendant Steven
10 Chase. So let's examine the evidence that shows the defendant
11 Steven Chase's PlayPen.

12 In December of 2014 you heard the FBI got a lead
13 that helped him discover that the PlayPen website was being
14 housed on a server here in Lenoir, North Carolina, a place
15 called CentriLogic. They issued numerous subpoenas and legal
16 process to this particular company in an attempt to find out
17 what they could about who was running this website. And all
18 the information that they received took them directly to the
19 defendant. Let's look at what they received.

20 So as I said, if you look at the upper left hand
21 corner of the graphic in front of you, the Playpen website, it
22 took them to CentriLogic.

23 CentriLogic provided them with records that included
24 the last log-in to the customer account that was responsible
25 for the PlayPen website, and that included an IP address that

1 was being used by 3119 Carrabassett Drive in Carrabassett
2 Valley, Maine. Who was staying at the house at the time the
3 account was being logged into? The Defendant, Steven Chase.

4 CentriLogic also showed that the account that was
5 maintaining the PlayPen website was in the name of someone
6 named Mike Taylor in Austin, Texas. The investigation
7 revealed that name and address to be fictitious. And no one
8 was surprised by this because no one expected anyone to use
9 their real name to be used to set up an account to be used to
10 house child pornography.

11 But the account still had to be paid for. So they
12 tracked the records for who was paying for the server space to
13 maintain the child pornography website and that took them to
14 PayPal. And those records from PayPal, they again reviewed
15 the IP addresses. And just to refresh your recollection, IP
16 addresses are kind of an individualized phone number for a
17 person's computer that will allow the agents to trace it back
18 to a certain account.

19 In this case they learned that the PayPal account
20 was being accessed from two different places they could find.
21 One being, again, the 3119 Carrabassett Drive residence in
22 Maine. The other being a residence in Naples, Florida. What
23 do those two residences have in common? The Defendant, Steven
24 Chase.

25 Now an email address was also used to sign up for

1 the server space to house the Playpen website. The IP address
2 logs for the email address that was used were also examined.
3 And guess what the agents found again? The email account was
4 being accessed from 3119 Carrabassett Drive in Maine and the
5 Naples, Florida residence. Again, what is the one unifying
6 factor about those residences? The Defendant, Steven Chase.

7 And then, finally, the actual PlayPen administrator
8 account was logged into directly from an IP address that could
9 be traced. When the agents traced that address they came back
10 to the address in Naples, Florida. And who lives in that
11 house? The Defendant Steven Chase.

12 So no matter which lead the FBI followed, it always
13 went straight to the defendant.

14 Now you've heard a lot about the IP addresses in
15 this case. And, unfortunately, a lot of the IP address in
16 this case were unable to be traced. Because -- not traced,
17 they were not helpful or necessarily reliable because they
18 came back to VPNs which are Virtual Private Networks or Tor
19 nodes. And as you heard, those are two mechanisms that people
20 use to hide their location when using the internet. But we do
21 know that the defendant was using the VPN software as well as
22 Tor.

23 So after the agents had gathered all this
24 information they executed a search warrant at the defendant's
25 residence in Naples, Florida. And the evidence they found in

1 that home only solidified what they already knew, that the
2 defendant was PlayPen.

3 Just after midnight on February 20th, they attempted
4 to enter the home in Naples, Florida. And as they -- as you
5 heard from Special Agent Baugher about how they approached the
6 house with the intent to do a no-knock search warrant but they
7 were compromised when they saw the defendant through the
8 window.

9 So as they attempted to enter the home, Special
10 Agent Baugher is yelling, "Police. Search warrant." As he's
11 yelling that, Chase is fighting two agents to keep them from
12 entering his home. And he puts up a good fight. There are
13 two agents pushing on the door with Mr. Chase pushing back
14 against them. But the two agents do eventually win the fight
15 and the FBI enter the home. Even after the FBI are in the
16 home and actually fallen on top of Mr. Chase, he continues to
17 struggle to get away and is seen lurching towards his laptop
18 computer. This computer that the SWAT team was there to try
19 and protect.

20 So why would someone try to fight FBI agents to keep
21 a door closed; then when they do make entry, lurch towards
22 their computer? That's someone who knows that all the
23 evidence that is needed to convict him was not only on the
24 computer, but was opened and obvious to anyone who just walked
25 up to the computer.

1 If Mr. Chase could just get to that computer that
2 day he could have pulled out the thumb drive, encrypting it,
3 and shutting computer and hopefully, at least, keeping the FBI
4 from finding some of the evidence against him. But luckily he
5 didn't make it there and the agents were able to secure the
6 computer, the thumb drive, as well as his cell phone and
7 conduct examinations on the items that they recovered that
8 day.

9 Let's look first at the computer, the items he was
10 trying so hard to get to.

11 When the agents approached the computer this is what
12 they saw. The defendant was actively logged into the PlayPen
13 profile, the administrator of the website. You can clearly
14 see on the screen the first forum that is visible to someone
15 looking at the computer is the Administration forum. A forum
16 that's only available to the people who are the administrators
17 and moderators of the website.

18 And on the upper right hand corner -- I know it's
19 hard to see in this picture but you can remember the closer up
20 picture, you see that where he was logged in as PlayPen.

21 Also on this computer the agents discovered he was
22 actually logged into the server, the administration kind of
23 server that's used to maintain the website.

24 And as you can also see in this picture there's a
25 thumb drive that's attached to the laptop. And open on the

1 computer when the agents approached was a file titled "PP_2."

2 So at the moment the agents entered this house,
3 while this computer was logged into the administrative account
4 of PlayPen, while they were logged into the administrative
5 part of the server that housed PlayPen, and a file containing
6 the most relevant information to operating the website was
7 open, the defendant was also operating a very effective
8 antivirus anti mal-ware program. A program that was so good
9 and so strong that when the FBI attempted to conduct an
10 on-scene forensic, it immediately detected the program and
11 actually deleted the program from the forensic examiner's
12 thumb drive.

13 So once the computer was seized you heard about the
14 process it went through to be analyzed. And after it was
15 analyzed they found numerous pieces of information on the
16 computer linked to the PlayPen website. Again, this is the
17 defendant's computer. First, they found various forums on the
18 PayPal website had been visited from this computer. They
19 could tell this by looking at the browser history. If you
20 visit a website it leaves a little -- a track on your computer
21 so the computer knows you've been there.

22 So in this case they were able to tell that someone
23 using that computer had been to the Administration forum of
24 the PlayPen website, the "Preteen Videos Girls HC" section,
25 and the "Preteen Video Boys HC" section, and the "Preteen Girl

1 Chan" section. They also found bookmarks on the computer.

2 Now bookmarks are not something that's created by
3 the computer such as the browser history. Bookmarks are
4 something that are user created. A person accessing the
5 computer has to choose to save a website as a bookmark. It's
6 a way to get there quicker, it's a shortcut.

7 So in this case the user of this computer wanted a
8 shortcut to three specific sites. One, the PlayPen index.
9 That was the picture we showed you that listed all the forums
10 that the website had to offer. The second was the PlayPen
11 image hosting, and the third was the PlayPen file hosting.
12 The other two parts of the website that helped it to run
13 together.

14 They also found Google searches relevant to child
15 pornography in the PlayPen website. They found a person using
16 this computer had searched for the PlayPen web address. They
17 searched for the search term "Siberian Mouse." What's
18 significant about that? That's not a term someone normally
19 searches for. You wouldn't know that kind of term was
20 associated with child pornography unless you're someone who's
21 been involved with child pornography and extremely familiar
22 with it to know that that term will take you to somewhere
23 where you could find child pornography.

24 He also searched child porn on Netflix and Tor,
25 which as you heard, PlayPen was a website on Tor.

1 But that's not the only evidence the Government
2 found on the computer. They found an actual screen shot --
3 well, actually, I'll come back to that in a minute. I'm going
4 to show you the screen shot.

5 They also found child pornography in the recycle bin
6 of the defendant's computer, one video and one image. They
7 also found the PlayPen logo actually in the defendant's
8 recycle bin as well.

9 Actually they found a screen shot of the actual
10 PlayPen saved to the defendant's computer. This is not like
11 the undercover session the FBI captured. That's a picture
12 that was created by the user of the laptop and saved to the
13 laptop. And it shows that the person on the laptop was logged
14 into the Administration section of the PlayPen website, and in
15 the process of posting a reply about a logo contest. It also
16 shows the computer had the VPN software, Tor, and some other
17 software programs.

18 Now they also conducted an examination of the thumb
19 drive that was attached to the defendant's computer, as well
20 as the defendant's cell phone.

21 Look first at the thumb drive. First of all they
22 found over 8,900 files depicting child abusive and exploitive
23 material. They also found backup copies of the PlayPen
24 website. And even more kind of unusual, something that was --
25 they found that was, I don't think -- that was kind of a

1 surprise, was a "Stuff" file. This file contained the text
2 that actually gave you directions on how to create,
3 specifically, the PlayPen website on Tor as a hidden service.
4 These aren't just general directions for how to create a
5 website or even how to create a website on Tor. It's how to
6 create the PlayPen website on Tor. That was saved to the
7 defendant's encrypted thumb drive.

8 There was also another file entitled, "PP_2." This
9 was a file actually opened when the agents executed the search
10 warrant. And this -- there was plenty of information in this
11 file. I just picked out a couple of pieces here to highlight.

12 If you look at the top right corner of the screen it
13 shows the Mike T. Yahoo address with the -- underneath it, at
14 ##MINE9999##. As you know through the evidence, the Mike T.
15 email address was the email address associated with the
16 account used to house -- that created the PlayPen server. It
17 was also the email address that was associated with the PayPal
18 account that was paying for the server space to allow the
19 PlayPen server to exist.

20 Then following up with the rest of the investigative
21 information, Mike Taylor 2403 West 8th Street, Austin, Texas.
22 That is the fictitious identity the defendant assumed to
23 create this account. That is the information that was in the
24 Playpen -- the PayPal records, as well as the CentriLogic
25 records that were used to maintain this website. That

1 information was found in this file on the defendant's
2 encrypted thumb drive.

3 Similar next to it is the PayPal -- it shows the
4 PayPal information that it was using the Mike T. Yahoo account
5 and had the password underneath it.

6 And then below that in the same file there was a
7 link that took you to -- that showed the billing area of the
8 CentriLogic server, and, again, had the email address that was
9 used to set up the child pornography website we're here for
10 today.

11 Now if you look at each of those entries, what
12 matches between them besides the email address is that
13 ##MINE9999## which creates some sort of password, is what
14 we're inferring from the position of that and how it is
15 associated with each of those accounts. Do you remember where
16 we saw that in another place? In the defendant's home on a
17 piece of paper pinned to a bulletin board. He had a list of
18 different accounts, and for all of them you can see clearly
19 the MINE9999 written out over and over again on a piece of
20 paper found in his home.

21 Then finally in that "PP_ 2" account, the one last
22 thing I want to draw your attention to is, it actually had
23 links to the "Hard Candy Hidden Wiki" site. And as you heard
24 from several different witnesses, "Hard Candy" was sort of an
25 index for people to use to find child pornography websites.

1 Continue to go on the "PP_2" file, there is even
2 more information related to PlayPen. It had different URLs or
3 website addresses and user IDs. Again, all associated with
4 PlayPen.

5 If you look at the defendant's personal cell phone
6 there was also information on there linking him to PlayPen.
7 These were Google searches that were pulled from the
8 defendant's cell phone showing his cell phone had been used to
9 search for "PlayPen.onion, Playpen CP Tor Onion." And you
10 heard CP stands for child pornography in these cases. And
11 again, "Playpen.onion." So someone was using the defendant's
12 phone to actually conduct searches that would take them to the
13 Playpen website that could be found on Google.

14 Now the defendant had brought up hacking and
15 mal-ware through several of the witnesses asking them
16 questions about that. There seemed to be a suggestion that
17 somebody else took over the defendant's computer remotely
18 controlling it to commit the crime.

19 But what they're actually suggesting is that someone
20 was able to hack into the defendant's computer while he was
21 running antivirus software, remotely control it, put evidence
22 of the crime on the computer, put evidence of the crime on his
23 encrypted hard drive, and put evidence of the crime on his
24 phone. Oh, and it just so happens that the password -- or
25 excuse me, the password used by the hacker who created this

1 supposed website, also knew the password that the defendant
2 had written down on a piece of paper in his house.

3 The fact is, there's been no evidence of any
4 mal-ware or virus on the defendant's computer. And the fact
5 is, internet activity was being monitored at various times at
6 both the times he was in the residence in Naples and in Maine.

7 And as you heard Special Agent Dan Alfin testify
8 that there was no evidence of hacking or remote control of
9 anyone remotely accessing the defendant's computer in any of
10 those logs. So any suggestion of a hacker putting this
11 information on the computer, his phone, or his encrypted thumb
12 drive is mere speculation.

13 When you look at all of this evidence, it's clear
14 there's only one person who can be the administrator of
15 PlayPen, and that's Steven Chase.

16 So now that we know who PlayPen is, let's look at
17 the charges that he's facing. As you heard the defendant or,
18 excuse me, the Judge told you about seven different charges
19 he's facing ranging from enterprise, conspiracy to advertise,
20 advertise, three counts of transportation and possession. I'm
21 actually going to start with possession and work my way back
22 up.

23 And the Judge is going to instruct you after the
24 arguments about the elements of these crimes and what the law
25 is. What I'm going to do here is kind of give you a quick

1 summary of the law so we can talk about how the evidence
2 applies to it.

3 So as I said we're going to talk about possession of
4 child pornography first.

5 Possession of child pornography is when a person
6 knowingly possesses material that contains at least one image
7 of child pornography, knew it was child pornography, and that
8 the child pornography in or affected interstate or foreign
9 commerce or used a means or facility of interstate or foreign
10 commerce.

11 So what is child pornography? Child pornography is
12 a visual depiction of a person under the age of 18 engaged in
13 sexually explicit conduct. And sexually explicit conduct, as
14 the Judge will instruct you, can range from different things.
15 It can be vaginal penetration, oral penetration, bestiality,
16 masturbation, also includes lewd and lascivious display of the
17 genitals of the child.

18 So he'll instruct you as to that definition, that's
19 generally what you should be looking for in deciding if
20 something is child pornography.

21 So what is possession?

22 Well, there's several different kinds of possession.
23 There's actual possession or there's constructive possession.
24 Right now I'm in actual possession of this computer. I'm
25 manipulating it, controlling it, moving it around. You can

1 see me doing that.

2 I'm in constructive possession of my computer back
3 at my house. I have a key to get to my house. I know the
4 password to get on the computer. And I know what's stored on
5 there, there are pictures, there are documents, there's all
6 sorts of information on there that if I want to I can go home
7 and put in my password and delete some of the pictures, move
8 the pictures to the folder, email some pictures. So even
9 though I don't have the computer here with me, I'm still in
10 constructive possession of it because I've got the means and
11 the ability to exert control over that computer.

12 There's also joint versus sole possession.

13 Sole possession is when you possess something alone.
14 But the law also recognizes joint possession where you possess
15 stuff with other people, more than one person can possess an
16 item.

17 And then when I talk about the interstate and
18 foreign commerce, or a means of interstate -- or excuse me, a
19 means or facility of interstate commerce, that's things such
20 as traveling across state lines, sending a photograph via the
21 internet crosses state lines. The internet, just by itself is
22 a means of interstate -- excuse me, is a facility of
23 interstate or foreign commerce.

24 So in this case the defendant was in constructive
25 possession of all of the child pornography that was on the

1 PlayPen website. As the main administrator he exerted the
2 ultimate control over it. Other people may upload most of the
3 pictures, but he could delete them. He could move them. He
4 could download them and save them.

5 In fact, he acknowledges this fact as much in his
6 posts where someone says to him, "The new file hoster is great
7 news for us and great news for the admin of PlayPen. You
8 don't have to download CP anymore, because we are now going to
9 be sending it all to you."

10 So they're saying by you controlling the website you
11 don't have to go looking for it. We're just going to give it
12 to you then you have it.

13 So PlayPen acknowledges, "That's why" happy face
14 "that's why I asked uploaded files be encrypted and password."

15 The Government must also show that at least one of
16 the images depicted a minor under the age of 12. We presented
17 multiple images to the jury that would meet that definition.
18 I'm not going to show you the images again. They will
19 available if anybody needs to look at them to determine if the
20 Government has met its burden. But for now I'm just going to
21 describe them to refresh your memory.

22 First of all there was a toddler video we showed you
23 that contained three separate images of three children under
24 the age of two whose genitals were displayed in lewd and
25 lascivious manner. There was a puppy thread which was a

1 series of photos with a very young girl children, was clearly
2 under the age of 12, having her genitals exposed. And then,
3 finally, there was the "My Pee Collection" three images --
4 series of images we showed you. That was the thread that was
5 last accessed by the defendant before his arrest. And those
6 images also depicted young girls engaged in both urination and
7 lewd and lascivious display of their genitals.

8 So, ladies and gentlemen, that's the evidence that
9 you need to convict the defendant of possession.

10 The defendant is also charged with transportation of
11 child pornography. He faces three counts. The three counts
12 of transportation are based on at least three threads we
13 showed you during the trial. The transportation of child
14 pornography involves the defendant knowingly transported or
15 moving, either across state lines or in and affecting
16 interstate or foreign commerce by using any means or facility
17 of interstate commerce, such as the interstate, a visual
18 depiction of child engaged in sexually explicit conduct.

19 So we showed you each of these three threads as the
20 basis for those charges. In each of these threads the
21 defendant is using the internet to transport child pornography
22 through a server here in North Carolina where then he made it
23 available to anyone who wants to see it. So by using the
24 internet to conduct his crime and send these images and
25 videos, he is clearly meeting the element of interstate and

1 foreign commerce.

2 So let's look at the first one on its own. The
3 PlayPen hosting thread. Again, I won't show them to you, but
4 they will be available to you if you want to actually pull up
5 a thread and look at any of the images or videos. But that's
6 the thread where someone reported, "Hey Admin, I'm having some
7 trouble getting to these photos, these are links, I can't get
8 to them. The defendant PlayPen responds and posts three
9 series -- they call them contact sheets, those little
10 previews. Posted three series of photos depicting
11 prepubescent children engaged in various sex acts. He's the
12 one who made that available on the server in North Carolina by
13 posting it on there. So not only is the person responding to,
14 but any other user on the website who happened to click on
15 that thread.

16 Count Five is a thread titled "Web Cam Three Girls."
17 This is a thread that was posted in the: Preteen Video Girls
18 HC" section. As you heard, HC stands for hard core. The
19 defendant created this thread himself. In it he used it to
20 share the video of three minor females undressing and dancing
21 in front of a camera, and the girls exposing their genitals
22 over and over to the camera.

23 Another user replies, the defendant posts, "Thanks
24 muchly."

25 Count Six is also posted in the "Preteen Video Girls

1 HC" section. And, again, in this case the defendant is
2 uploading, through the North Carolina server, links to show
3 that, to allow other people to access a video called
4 "NattyDatty 8 YO." That was the video that depicted a girl no
5 older than eight years old. You heard from the agent who
6 actually met her. He met her, she is eight years old, being
7 raped by her father. A video that was produced in Hawaii, and
8 then unfortunately they are disseminated afterwards so that
9 they then end up in the defendant's possession and he could
10 then host it for over 100,000 people to view and comment on.

11 Moving next to the advertisement charge.
12 Advertising child pornography. The first thing you may think
13 of is a radio or a television where you hear ads and see
14 commercials. Those are ads. But the Judge is going to
15 instruct you as to what the legal definition of what an ad is
16 in this type of case.

17 Clearly you're not going to find a television
18 commercial for child pornography. Child pornography ads are
19 going to be more discrete. They're going to be more secret
20 where only people who are looking for them will find them and
21 hopefully law enforcement will not find them. But basically
22 under the law someone advertises child pornography when they
23 alert other people to where it is with the intent of
24 attracting them to it, showing that -- letting them know it's
25 there or letting them know what they're looking for also

1 qualifies as advertisement.

2 So you don't have to just be sharing. When you say,
3 I'm looking for this particular image or video, and that is
4 also advertising because you are putting a notice out that you
5 are seeking child pornography. It doesn't have to be for
6 sale, it just simply has to be something that calls another
7 person's attention to it.

8 So for an advertisement charge we have to show the
9 defendant did some sort of notice or offer to receive,
10 display, or distribute a visual depiction of a minor engaged
11 in sexual explicit conduct. That they used a facility of
12 interstate or foreign commerce, or that it was transported in
13 interstate or foreign commerce. And, again, the internet is
14 using the interstate commerce.

15 So let's look at the evidence that the defendant
16 engaged in advertisement of child pornography.

17 PlayPen was an online child pornography bulletin
18 board. Anyone could join this board as you heard. They had
19 to find it. They had to be looking for it. But then once
20 they found it, anyone could find it. And a lot of people
21 found it, over 100,000 different accounts were created on this
22 website.

23 This website was designed to allow people to share
24 and seek out the child pornography that they desired. You
25 heard one of the -- Mr. Browning, who was Stretch Armstrong on

1 the website, testify that in this community of people who like
2 child pornography, that even within that community they have
3 some preferences. They still have likes and dislikes. Some
4 people may prefer boys, other people may prefer girls, or
5 certain types of child pornography.

6 So in order to accommodate that when Mr. Chase set
7 up the website. He set it up so people wanting to see child
8 pornography could find what they were looking for. He created
9 a different forum ranging from "Jailbait," to "Toddler," to
10 "Chubby," "Incest." There was even a "Request" thread where
11 people could post their request for what they were looking for
12 and other people could help them find them. And then within
13 those forums there were sub-forums. And so what I put up here
14 now on the screen is an example of the sub-forum for the
15 "Girls Hard Core" section within the "Preteen Videos." So as
16 you can see, when you go into the sub-forum there's a list of
17 threads available within that forum. You still don't see the
18 pictures or videos, you just see titles. Titles that are
19 advertising what's within them. Those are titles that are
20 specifically created by the person who is creating the thread
21 to say what they are either distributing or what they are
22 seeking.

23 And these forums are maintained by the
24 administrators and moderators to make sure the subject matter
25 remained true to what the forum topic said it would be.

1 The defendant, like others, distributed child
2 pornography through these forums. For example, we just talked
3 about this thread. This is the thread that was the "Web Cam
4 Three Girls" that the defendant posted in the "Girls Hard
5 Core" forum area we were just looking at.

6 So in creating the thread, the defendant created a
7 thread called "Web Cam Three Girls." So that anyone visiting
8 the "Girls Hard Core" section would have gone to a website
9 like this and seen "Web Cam Three Girls" created by PlayPen.
10 And they would see this title in this section, and they would
11 know that that thread was offering to share with them a web
12 cam video depicting three pre-teen girls engaged in hard core
13 child pornography.

14 So using just those three words, "Three Girls Web
15 Cam," putting it in this context in this setting, the
16 defendant published and noticed to all the users of the
17 website, as we established, thousands and thousands of
18 individuals, that he was offering to distribute that type of
19 video to all of them.

20 And clearly his ad was successful, because if you
21 look at the ad, the thread was read 8,453 times. So this
22 title is clear and quite enticing and brought a lot of
23 attraction to his ad.

24 Conspiracy to advertise child pornography, we have
25 to prove the advertisement. But we have to prove the

1 defendant agreed with somebody else to commit this crime. And
2 in this case he clearly conspired with at least one other
3 person to commit this crime. They agree that they were going
4 to violate the law, the advertising of child pornography
5 together.

6 When the defendant created PlayPen, he was no longer
7 the administrator. Mr. Browning had told you that. But as
8 the website grew, he added to his team. He brought in more
9 administrators as reflected here, we have Vitellius and
10 Isabella. He added moderators including Stretch Armstrong,
11 the defendant Mr. Browning, and a number of other individuals.
12 And below that were local moderators who have control over
13 individual websites.

14 Together these people jointly agreed that they
15 wanted to create a website safe for people who wanted to offer
16 to distribute, receive, and seek out child pornography.
17 Together they implemented rules. They didn't want any hurt
18 core video. They were okay with hard core but not hurt core.
19 They maintained the forums together. They moved things around
20 to popular forums.

21 You saw some of the postings, Would "this qualify as
22 hurt core? Should we create this kind of forum?" Those kind
23 of conversations were going on in a special administration
24 section where they spoke with each other. They ensured by
25 working together that the ads and notices they posted, both

1 themselves and other people, would be in the proper context to
2 send the message they wanted to send.

3 The defendant was an active part of this conspiracy.
4 At the time the undercover went into his "Stats" page, the
5 defendant had been on the website a total of more than 12
6 days. That's a lot of hours. I'm not going to try and do the
7 math. He created more than 200 posts by that time.

8 Now we don't have to show that the defendant was the
9 most active. We don't have to show he was the leader of the
10 conspiracy, but that he, in fact, formed an agreement with
11 other people to commit this crime.

12 He participated in the "Admin" section, as I
13 mentioned, discussing the running of the website. Here are
14 examples of two of the posts he made in that section. One in
15 which he reaches out and thanks the other people, the other
16 administrators and moderators for their hard work saying, that
17 "PlayPen looks great. Without you this never would have
18 happened."

19 So clearly they're working together because the
20 PlayPen website was a success at this point. Talks about the
21 number of members they have. Even though he pruned members
22 not logged in, he still had 138,000. Then talks to them a
23 little bit about his went vacation.

24 In the second post he's responding to Stretch
25 Armstrong's post, Mr. Browning's post where he's asking, "What

1 do you think I should do about this video? I think it
2 qualifies as hurt core. Is that the type of thing we want in
3 our forum? Should I remove it?"

4 And the Defendant Chase issues him basically an
5 order, "Just delete it. Just give him a reason why." So
6 clearly they're all working together to make sure the board is
7 the type of board where people can find certain types of child
8 pornography.

9 The final charge the defendant is facing is engaging
10 in child exploitation enterprise. This charge encompasses a
11 lot of the other charges we talked about, the three
12 transportation charges, the advertisement charge, and the
13 possession charges, which is why I started with those
14 explanations first.

15 So we have to show that the defendant committed
16 three or more separate offenses that violated Chapter 110,
17 which include Counts Three through Seven that I just went
18 through, that three or more offenses involved more than one
19 victim, and that the defendant committed those offenses with
20 three or more people. Otherwise we have to show he was acting
21 in concert. It's very similar to the conspiracy idea we went
22 through where you make an agreement with someone to violate
23 the law.

24 So if you break those down to individual elements to
25 see if we met them, as I said, first you look at whether there

1 are three separate offenses. We provided you with five that
2 the defendant has committed. The law requires that you be
3 unanimous as to at least three of those being committed by the
4 defendant.

5 Second, that there was more than one victim. If you
6 look at those five counts, ladies and gentlemen, there's
7 clearly more than one victim. You have the victim from
8 Hawaii, you have the three girls in the web cam video, you
9 have the young children in the response that Mr. Chase made,
10 and then the possession count we talked about three different
11 kids in the "Toddler" section, there was the bondage image.
12 So clearly there was more than one child.

13 Finally, that he and at least three other people
14 agreed that they and perhaps others would violate the laws by
15 a means of common plan or course of action. Now, we're not
16 required to show that three people committed each of the
17 predicate offenses. But just as the defendant was committing
18 at least three predicate offenses, he acted in concert with
19 three different people, so that could be one on each.

20 This is a website with over 100,000 members who had
21 a common goal as we discussed. This massive website was
22 maintained and organized by a team who helped each other and
23 other members to accomplish a common goal. Mr. Browning, as
24 you heard, was an active member of that team. You saw his
25 stats. He was online a lot. He stayed online some five to

1 six hours a day on this website. And he offered up this
2 analogy to how the website worked.

3 He said, "It works like a restaurant." There's a
4 manager who would be Mr. Chase. He created the website. He
5 paid for the server space. He set the original rules. He had
6 the ultimate power to shut the website down at any time. And
7 he had assistant managers Vitellius, and Isabella, who you
8 heard was an individual named Michael Fluckiger who helped
9 him, and they were kind of second step down in hierarchy. And
10 then there were the shift leaders of the restaurant who he
11 analogized as being like a moderator, he and other people who
12 implemented the rules that were set up by the administrators.

13 The defendant relied on this team that he put
14 together to make sure that the child pornography that he
15 jointly possessed and controlled fit within his rules and
16 regulations. Much like the manager of a restaurant relies on
17 his employees to make sure the restaurant runs smoothly. And
18 together they worked to keep this board orderly so that when
19 the defendant posted his threads, people knew what was being
20 offered. And by working together they ensured that the
21 defendant had what he wanted, a place to share his child
22 pornography with other people. After all, at one point
23 Mr. Browning said, "PlayPen was the only game in town where
24 people went to get child pornography on Tor."

25 We also provided you other postings that showed how

1 the defendant interacted with other members creating rating
2 scales, putting in new moderators and buying more space for
3 child pornography. They were working together to achieve a
4 goal.

5 As the defendant said in one posting, "There should
6 be a place in this world for CP." That's what he wanted and
7 that's what they were all working towards. He designed it
8 that way, and he recruited others to help him facilitate the
9 sharing of child pornography among people interested in that
10 material. In doing so, they in return gave Chase a place
11 where he could advertise, share, and possess child
12 pornography.

13 Ladies and gentlemen, the evidence before you is
14 clear, the Defendant Steven Chase is PlayPen. The evidence is
15 also clear that he is guilty on all charges. Thank you.

16 THE COURT: Any of the jurors care for a break
17 before we go to the arguments on the defendant?

18 THE JURY: (No response.)

19 THE COURT: All right. You may proceed, sir.

20 MR. ADOLF: Thank you, Your Honor. Morning folks.

21 THE JURY: Morning.

22 MR. ADOLF: I don't know what she's talking about.
23 I am not saying that somebody secretly slipped a bunch of
24 child pornography on to Mr. Chase's computer. That was his
25 account. You saw the evidence of that. You saw what they

1 found in his house. It was supposed to be his account. It
2 was supposed to stay his account. What happened was, it was
3 hacked and other people were doing things using that account.
4 That's what I'm saying. That's what the evidence points to
5 that you saw here.

6 I told you Tuesday morning, I guess it was,
7 computers don't lie. Computers don't commit crimes.
8 Computers don't make decisions before they should, but people
9 do all those things. People lie, people sometimes make
10 decisions before they should, before they know everything
11 that's going on. And the Government just talked about all the
12 things that some hacker would have needed to know to get
13 information off of Mr. Chase's computer or put it on there.
14 None of that is true. You heard the FBI confirmed it. All
15 somebody needed to know was username and password and they
16 could take over that account. And you'll see we'll go through
17 some of the evidence that the Government doesn't want you to
18 look at, that they haven't shown you, that shows that is what
19 happened.

20 You see, the FBI wasn't looking for clues about
21 somebody else using the account. You heard Agent Alfin say he
22 had traced the payment to Mr. Chase. They went into his
23 house. They saw he had the site open that was it. The
24 investigation was over.

25 When you start to see things, those logs that I

1 talked about showing that there were log-ins come from other
2 places, from other computers, using other accounts that could
3 be traced. That's all information the FBI didn't have when
4 they targeted Mr. Chase. That was information they didn't
5 have yet when they went into his house and pulled him out and
6 saw the computer there.

7 The reality is, the first people ever to sit and see
8 all the evidence from before, from after, are all of you.
9 That's why we have this jury system that we have. Because
10 it's up to somebody when the case is all over, when everything
11 is all in, to take a fresh look at everything, not trying to
12 favor one side or the other, not making up their minds, not
13 saying, for instance, like Agent Alfin said when I asked him,
14 "Well, why didn't you try to go see where these other postings
15 came from?" Right, those people had to have accounts too.
16 Where is that?

17 He was candid at least, he said, "Well, we got our
18 man already. I didn't see the need to do it." Well, they
19 didn't have those logs. That's the information you have that
20 they didn't.

21 I'm not faulting them for doing what they do. Law
22 enforcement's job is to try to catch people. They have to do
23 things on the fly. They have to concentrate their resources.
24 It's at the end of the day when we can all sit back and look
25 at what's been alleged, and look through the things that maybe

1 they didn't want you to pay attention to and make your own
2 decisions.

3 And I think it was telling when the Government just
4 said now, "every lead the Government followed went to
5 Mr. Chase." Not that every lead went to Mr. Chase. But every
6 lead they followed. We're going to talk a little bit about
7 the leads they didn't follow that you heard Agent Alfin and I
8 talked about.

9 Can you show me Defense 1. Put that up, please.

10 This is one of the posts that we talked about that
11 the FBI didn't know about when they first targeted Mr. Chase.

12 Can you blow up the text of that? Thank you.

13 You'll have all this evidence available to you in
14 the back if you want to look at it. And just to get it out of
15 the way, I'm not going to show you any pornography while we're
16 out here. This and other exhibits will be available to you in
17 the back so you don't have to remember it.

18 But I just point out the date and time of that
19 August 25th, 2014, at 5:00 on whatever time scale that is.
20 That's a post in Russian. And Agent Alfin was asked that.
21 Mr. Chase posting that? Does he know Russian? Ever been to
22 Russia? Make contact with anybody in Russia? Did you find
23 searches in Russian on his computer or anything like that? He
24 said, "Well, anybody can go on Google translate." But why?
25 Why is -- if they're saying that was Mr. Chase posting that,

1 what's he doing posting things in Russian?

2 You got to remember something, and I think it was
3 important to listen to some of what Mr. Browning said
4 yesterday that, yes, this was all secret. And, yes, all these
5 people had to keep this information secret from each other.
6 But this was the one place that they felt like they could
7 really safely talk about anything they wanted to. It was like
8 their little confessional booth, I guess if you want to call
9 it that. Really the opposite. It's not to absolve their sins
10 but magnify them. Be that as it may, they were free to say
11 whatever they wanted to. They weren't trying to -- for the
12 one time not trying to hide everything from anybody about what
13 they were about and what they were doing. Nobody is posting
14 that to try to pose as a Russian. That is somebody in control
15 of the PlayPen account who is comfortable in Russian and is
16 participating in a Russian discussion.

17 And, you know what, if they're trying to say that
18 Mr. Chase somehow is just posting in all kinds of languages,
19 why is it only that one? You saw that there are discussion
20 groups in Dutch, in Spanish, and Italian, from all over the
21 world. Why Russian?

22 Show me Government's Exhibit 18.

23 Right there in front of you you have a little more
24 in depth profile of whoever it is that's using the PlayPen
25 account. And that tells you more detail about what this

1 account has done.

2 Can you zoom in on that bottom right corner?

3 What this tells you is where is this PlayPen person
4 spending most of their time? What little sections of the
5 website are they actually concentrating on?

6 "Information and Rules," I guess that's important if
7 you're working on the site and "How To, General Discussions."
8 Before you even get down to any kind of particular fetishes or
9 interests, that person -- that person's fourth most favorite
10 place to be active is in the Russian department. Somebody who
11 doesn't speak Russian, never been there, is posting routinely
12 in some sort of Russian group, even more than they are talking
13 about child pornography?

14 And remember Agent Alfin's answer to that. When
15 you're talking about, like, what leads were pursued and what
16 weren't. I asked him about that and he said, Well, I don't --
17 I don't think the website is really calculating things right.
18 That's some sort of flaw. So I guess the computer is lying
19 like people, is what he's telling me.

20 And so you know what? When Mr. Hsu got on, the
21 analyst, to testify, I asked him, Anybody check? You had the
22 whole website sitting there. They showed you the servers.
23 They pulled the entire thing out of Lenoir, took it to
24 Washington or Maryland and looked at it. Is there any
25 indication -- and I think what I said was, "Did anyone ask you

1 to check if there were any anomalies in the counter function?"

2 Lots of you probably been on websites. A lot of
3 times you'll see businesses, particularly small businesses are
4 looking for people to want to visit the site and try to sell
5 things and so forth, will have a little counter on the bottom
6 that tells you "This website has been visited 650 times." It
7 goes up every time someone clicks on it. These are automatic
8 features that plenty of websites have. And the bulletin
9 boards like that, it's just a standard part of the package.

10 Why do we think that some bulletin board is not
11 working right? And why do we not check? And the answer is,
12 because we don't want the answer we're going to get. The
13 answer we're going to get is, it's working the way it's
14 designed to work, and the way it's always worked. And
15 somebody is spending a lot of time doing Russian stuff.

16 And what's interesting also about that post is where
17 it came from. One thing you heard from Mr. Browning is,
18 everybody on that website knew how to use it, knew how to get
19 on it. You had to. And the way you did it was going through
20 Tor. And that way nobody could see where you were. You
21 couldn't see where it was. That was what they were all
22 looking for, anonymity.

23 But somehow, some of those posts coming from PlayPen
24 were not anonymous the same way. Somebody was doing something
25 different.

1 Show me Defense 1 and 6. Zoom in on the text on the
2 top.

3 Once again I'm showing you a Russian post here. I
4 need you to pay attention for a minute to the exact date and
5 time: August 25th, 5:34 a.m. at that time. Now down at the
6 bottom what you're seeing is a log. And that is where the
7 server itself, the website kept track of every time somebody
8 logged on. What you're looking at there, you looked at it a
9 couple days ago, is a log of every time somebody logged in
10 using the PlayPen username and password.

11 And if you can blow up that one date, you can kill
12 the top one.

13 What you're going to see highlighted there --
14 actually, first show me the date and time of that post.

15 If you look over on the left of that blow-up there,
16 August 25, 2014, 5:34:24. So what you're seeing there is, on
17 the top you are seeing the actual post, that PlayPen posting
18 in the Russian language. And on the bottom you're seeing the
19 server recording where that came from. It's not blank.
20 That's not somebody logging in through Tor. That's somebody
21 logging in through or from a computer in Chicago, Illinois.

22 Any data about Mr. Chase ever being in Chicago,
23 Illinois, before or going there or Facebook posts? They got
24 his Facebook account. Anything to indicate he's ever been
25 there? Or was there anywhere around that time? No.

1 Now Agent Alfin told you that you could speculate
2 that, well, you know, that's probably a VPN company that might
3 or might not keep records. But I didn't feel like it was
4 worth it to just pick up the phone and ask them, You have a
5 record?

6 Some of you all work from home on computers. We
7 talked about that a little bit when you were being questioned
8 on Tuesday. And some of you use VPNs. And that means you
9 have to have your own username and password, sometimes it's
10 something your company sets up. And that's something that
11 that's a service that your company purchases, I guess, from
12 one of these computer companies. Somebody pays for that.
13 Remember, that's how they went to all the trouble to find this
14 PayPal account connected to Mr. Chase. All they had to do was
15 make a phone call to the company in Chicago, Illinois. They
16 got the IP address. And actually when we zoom back out you'll
17 see it. You can look at it in fact if you like. But that
18 also shows them the IP address that gave them that location of
19 Chicago, Illinois. So it's not just that that's recording
20 that that's somewhere in the Chicago area. They have an IP
21 address. That's a computer. It belongs to somebody that
22 happens to be somewhere in the Chicago, Illinois, area. A
23 couple phone calls, a couple Google searches and you can find
24 out whose computer that is. They chose not to do that. We
25 don't know whose that is.

1 Now, you can see that whoever was logging in and
2 making that Russian post was logging in a particular way that
3 shows you a location. And you might -- that might rung a
4 little bell with you because you said to yourself, I thought
5 the whole point of this website, this Dark Web stuff, is that
6 nobody knows where you are. So how is it that the server is
7 finding that computer in Chicago, Illinois? The answer is,
8 somebody's doing something differently. Because the people
9 who normally use the site, people who normally log in, there's
10 no trace of it.

11 Can you kill the blow-up and let's go back to the
12 data? Okay. Kill both of the blow-ups.

13 You'll see on that log, I guess it's a little hard
14 to see the dates. But you can see that some of those
15 log-ins - why don't you just blow up all the -- blow up the
16 locations. Yeah. Thank you.

17 You can see there are some in Chicago, Illinois,
18 there's some in Miami, some in Ashburn, and then there are
19 some that are blank. That is, some people logged in and the
20 server couldn't figure out where they were, didn't know
21 anything. That's people logging in the way Mr. Browning
22 logged in. The way anybody knew what they were doing knew how
23 to log in to leave no trace. And you can see somebody who's
24 logging into that site using the PlayPen account knows what
25 they're doing and is leaving no trace.

1 On that sheet I see one, two, three, four, five
2 times that was done. And then a bunch of times where people
3 are logging in some different way that's giving away where
4 they are. Or maybe they're trying to show where they are.
5 Maybe they're going through some sort of sites and some VPN to
6 try to throw somebody off and make it look like it's somebody
7 else doing it. Maybe it's somebody who was trying to pin it
8 on someone else and doesn't know how to do it right.

9 Now, we talked -- when we were talking back and
10 forth on Tuesday about how important it is to consider each
11 charge individually -- and this is not going to be easy stuff.
12 The charges are complicated, there's charges that are sort of
13 within other charges. And I'm not going to try to go through
14 every piece of evidence.

15 What I'm going to give you that I really ask you to
16 pay attention to is certain little points or questions about
17 each count that you need to ask, and they need to be answered.

18 And one thing I'm going to say that I really want
19 you to keep in mind or look for is pay attention to the dates
20 on those charges because the dates make a difference. The
21 dates don't just give you clues about the fact that it's not
22 Mr. Chase making those posts or committing those particular
23 crimes that are charged, but also that that makes a difference
24 as to what it gets used for when you look at other counts.
25 That's where it gets a little complicated.

1 So I want to go through the counts, just a little
2 bit on each, and just give you some things to look at and
3 think about.

4 I'll start with Count Seven, the possession of child
5 pornography. Like I said, the Government got up here and said
6 I'm going to try to say that somebody put that in his
7 computer, that didn't happen. That is what it is. You saw
8 the evidence. I'm going to leave that count to your good
9 judgment and move on.

10 But I differ with them a lot on Count Three which is
11 the advertising count.

12 The Judge is going to tell you the definition of
13 advertising. Like all legal definitions it's a little
14 confusing. But the Judge is also going to tell you, you do
15 not leave your common sense behind coming to court. You can
16 use the common sense that you use every day. And I encourage
17 you to use it even more when it's a matter of this
18 seriousness.

19 If I ask you, Hey, do you want to buy my car? Did I
20 just make an advertisement? No. An advertisement is
21 something that you want to spread far and wide that you want
22 to get people to know about because you're trying to get
23 something or give something or whatever it is you're trying to
24 do. But that's the essence of what it is. It's public.

25 If I, let's say I'm in -- I don't know if any of you

1 are in car clubs. I know there are a bunch around. I'm not
2 right now. But let's say you go to guys in your car club and
3 say, Look, I really need some money. I want to get rid of my
4 car but I like it. I know you guys would take care of it. If
5 one of you wants to buy it, that's fine. Don't tell anybody
6 else. I'm a little hard up for cash or, you know, it's not my
7 car anymore. So just keep it to yourself. Is that an
8 advertisement? On the other hand if you say to them, Look,
9 I'm trying to get rid of this car, if you know anybody
10 interested, let them know. Those are two different things.
11 One is an advertisement, one's not. An advertisement is
12 trying to get the word out.

13 What do we know about this website that they're
14 saying is advertising?

15 Can you give me Government's 2?

16 They showed you this same one, the front pages of
17 the website. There's a part they didn't want you to pay
18 attention to: "The Rules, spam flooding, advertisements,
19 chain letters, pyramid schemes, and solicitations are
20 forbidden on this forum."

21 Well, they didn't think they were advertising.
22 They're trying not to. In fact, I'm just -- just to boil it
23 down I'll put it this way: Imagine this trial was over, you
24 all have seen and heard an enormous amount of things that you
25 never seen before and you've been forbidden from talking about

1 it with anybody. But there will come a time pretty soon when
2 you can talk about it to other people. And, you know,
3 somebody may ask you, Well, what was your jury service like?
4 What was the case about?

5 You say, Well, it was about child pornography on the
6 internet on a website. And they're probably going to say, Oh,
7 my God, that is horrible. People just put that out on the
8 internet where anybody could get it? Where children can see
9 it? What are they doing, advertising it?

10 Are you going to say, Yeah, they were advertising
11 for the whole world? No, you're going to say, Well, actually
12 they were trying to keep it a secret on the Dark Web. You can
13 only get to it if you didn't reveal anything about it. You
14 should see what the FBI had to go through to try to crack it.

15 If you're trying to keep it a secret it's not
16 advertisement, folks. So I want you to keep that in mind when
17 you look at Count Three.

18 Count Two, to go backwards a little bit, I think is
19 even easier. Because Count Two is a conspiracy to advertise.
20 So what the Government is saying is that people got together
21 and agreed with each other to advertise child pornography.
22 Well, a lot of times people agree on things they do it in
23 secret, as this website is supposed to be secret, and so you
24 never hear what the words actually were of this agreement.

25 Well, you just saw it. That was the agreement. No

1 advertising allowed. I just read it.

2 All right. Counts Four, Five and Six are particular
3 posts. And what that means is, those are particular dates,
4 particular times, particular things that somebody using the
5 PlayPen account did, posted on the website. And we have
6 records of that.

7 Can you give me Government's 7? I'm sorry, not
8 Government's 7, Defense 7.

9 Now the Government was just telling you that there
10 were posts on particular dates and those are the crimes the
11 actual individual -- particular crimes that they say Mr. Chase
12 committed logged on to the PlayPen account. What they didn't
13 tell you was: Do we have any data from that same server about
14 where they came from?

15 Can you scroll down to September 26, 2014? I'm not
16 sure which page that is. And if you could just zoom that.

17 Now what you're seeing is posts from around that
18 date.

19 That's fine. That's fine.

20 What you're seeing is that some person or persons
21 logged on to the PlayPen account on certain dates and times
22 right around that same date. One of them on the 25th is going
23 to be one of those posts or one of the counts that the
24 Government is talking about. What you're seeing there is
25 there is no data about where that came from; hidden.

1 Whoever or how ever many people are logging on using
2 that account in those couple of days, they're doing it the way
3 everybody else does on the site. The way Mr. Browning told
4 you about. They're going through Tor and they are hiding
5 where they are. The server can't see them. They can't see
6 the server. You can see that because all the location data is
7 blank.

8 Now let's look at October 12th, 2014. You can kill
9 that blow up.

10 Now, this is one of those other counts, I believe
11 it's Count Five, that they're saying that post, what you're
12 seeing on your screen, October 12, 2014, 22:51:01 bulletin
13 board post.

14 Now, what you can see above that outside the blow-up
15 is for days and days before and after the person or persons
16 using that account are doing it the way everybody knows to do
17 it. Go through Tor, they can't see you and you can't see
18 them. But on that date somebody decides to log-in from a
19 computer in the Netherlands. Is that somebody's computer? Is
20 it a person in the Netherlands? Is it a VPN company in the
21 Netherlands?

22 I mean, I guess what the Government is going to say
23 is, you know, if it's some sort of company, well, that could
24 be anybody. And it could be Mr. Chase or you should assume
25 it's Mr. Chase.

1 Well, you just saw all kinds of locations. We're
2 talking about earlier, all kinds of companies. Why is one
3 person paying VPN companies all over the world to log-in to
4 something where anybody can log-in just use the free Tor
5 browser that you talked about that's easy to use, apparently,
6 as any of your regular internet browsers and there's no trace
7 of that.

8 Somebody is doing that on purpose and it is not --
9 Mr. Chase has never been to the Netherlands. He has no --
10 there's no evidence of him ever searching anything or doing
11 anything in Dutch on his computer. You heard the Government
12 keeps pretty good records of people coming in and out of the
13 United States. Anytime you get on a plane or boat leaving
14 this country or coming in, Department of Homeland Security is
15 checking on you. There is no evidence he ever went there.

16 And this is my point, and this is why I felt it so
17 important that we talk about this when we talked about it on
18 Tuesday is, it is very easy to say: You know what? He had
19 all that stuff in his house, he was working on it. I'm really
20 not concerned so much with what he actually did or didn't do.
21 He's just guilty.

22 I understand that human temptation because this is a
23 complicated case. You've been asked to do a lot of work.
24 What you've been through, frankly, in the last three days, I
25 wouldn't want to put most people through what you have to do.

1 But the job is not done. The hard part is just
2 beginning where you actually have to sit and say, Let's look
3 at that crime on that date. Is it something he committed or
4 is it just possible that somebody used the same kind of
5 hacking tool the FBI used and got into his computer and got
6 out with just all they needed to get was a username and a
7 password and it would leave no trace on this computer. And
8 isn't it possible when you see people logging in from
9 computers all over the country and all over the world that it
10 was somebody else?

11 One of the reasons that each individual count is
12 important, not just for what you see and what was done, but
13 also where you go from there in terms of your verdict is Count
14 One, which is the enterprise count. It's the first thing on
15 the sheet. But when you're considering that you actually have
16 to consider the other counts to sort of get to that.

17 And I was a little surprised, frankly, when the
18 Government spent a lot of time just now going through all the
19 elements of that offense and all the things you have to find,
20 they left out the biggest one. Or for me I think what is the
21 most important and at least it's an element you have to deal
22 with it, and I think it's critical. Which is that these were
23 crimes committed on separate incidents.

24 Even if you find that Mr. Chase committed some of
25 those acts, that he distributed on a particular date, that the

1 particular post was his. If you end up finding that he
2 somehow advertised or whatever it is, that last -- well, the
3 first count, Count One says that if it's someone who's
4 committed three of those other crimes, and they were child
5 victims, which is obvious.

6 And if it was more than one child, which is obvious,
7 but they have to have been committed on separate dates,
8 "separate incidents" is what the law says.

9 And what you're going to see is the advertising
10 counts are all one big count covering the whole thing. The
11 possession count is one count covering all the months of the
12 conspiracy. Those obviously didn't happen at different times.
13 They're not different incidents if they're all happening at
14 the same time.

15 So that's just the way it's charged. And the Judge
16 is going to tell you that you are not to consider any acts or
17 anything that are outside the indictment. You have to address
18 each count particularly. And what that means is what you're
19 left with is, what's on separate incidents? What separate
20 dates? And it's those three. That's what it comes down to.
21 Those three dates I just showed you with the two blank entries
22 and the one in the middle.

23 You know, I can't tell you how to make your
24 decision. It's all about whether the Government has proven
25 beyond a reasonable doubt. And what that ends up meaning, the

1 Judge is going to tell you the words say what they mean. But
2 I just want to put one thing up that I want to leave you with
3 here.

4 Can you show me our Exhibit 8 and 7?

5 When you're considering those three counts and
6 whether the Government has proven that those were Mr. Chase
7 and not a hacker -- actually just show me 8, first. Just give
8 me 8 on the whole screen. Can you zoom in on that? Yeah,
9 scroll through just a little bit.

10 What you're seeing here is Mr. Browning's log, or
11 what we know as Stretch Armstrong. This is every time that
12 Stretch Armstrong logged into the server. And part of the log
13 that the server kept is where he was. And what you see is
14 every entry is exactly the same. You got that 127.0.0.1. We
15 discussed what that means is basically like a blank. It's not
16 an actual place. And there's more.

17 That's all right. You can stop.

18 That is the log of someone who is an active user,
19 who is participating in the website, and who knows how to do
20 it, and gets on the way everyone else does, leaving no trace.
21 That's what that looks like. And Mr. Browning told you how he
22 did it. That's how he did it every time. No reason to do it
23 any other way where that gives you the maximum privacy, the
24 maximum chance that somebody like the Government seeing that
25 server, they can't find you. They have no location to find

1 you.

2 Now show me the other one, 7.

3 This is the log of the PlayPen account. This is the
4 log of the mastermind that the Government tells you is running
5 the whole show, the puppet master behind the whole thing.
6 Like the Wizard said in the Wizard of Oz, "Pay no attention to
7 the man behind the curtain."

8 As it turns out, it looks like there's a bunch of
9 people behind the curtain. This is someone they claim set the
10 whole thing up for maximum privacy and knew how to do it just
11 like everybody else did so there will never be a trace left of
12 where he was. And yet, there are traces all over.

13 Give me the next page. Stop just with the next
14 page.

15 See what you see here? Where is that? Texas,
16 Florida, Chicago, back and forth between all of them and
17 interspersed between them and down at the bottom are blanks.
18 So somebody knew how to do this right. Every time you see a
19 blank, that's somebody who knows how to get on and off this
20 website without leaving a trace.

21 Are those other people really in those places? Or
22 are those people who either don't know how to do it right or
23 are trying to deflect the blame on to somebody else?

24 Whatever it is, they're not trying to do what any
25 administrator or even just regular user of that website knows

1 how to do.

2 You can kill it.

3 Bottom line is this, folks, when we talk about three
4 posts with those three dates there's no proof that Mr. Chase
5 did it. I can't sit here and prove he didn't. The law
6 doesn't require it.

7 That's when the Judge told you about the importance
8 of reasonable doubt in our criminal justice system. What it
9 boils down to is this: We know it's hard, sometimes
10 impossible for an innocent person to prove that he's innocent.
11 And so we don't make him do that. We say, You are the
12 Government. You are investigating these cases. You are
13 accusing one of our fellow citizens of one of these crimes.
14 It's up to you to prove it.

15 If you can't, if there's any doubt left in your mind
16 and, you know, if a post from the Netherlands from somebody
17 who should know better doesn't tell you there's something else
18 going on, if posts about -- if posts from people who don't
19 even speak English all that well -- show me Defense 2.

20 This is one of the other posts that the Government
21 didn't want you to pay much attention to. That's somebody
22 using the PlayPen account saying, "I only speak English.
23 These personal posts make me nervous because I can't read
24 them."

25 Remember, people were particular. Mr. Browning told

1 you just because these people are into their particular
2 fetishes doesn't mean all bets are off, I think is what he
3 said. And somebody in PlayPen is nervous because he only
4 speaks English. I suppose the Government is going to say that
5 proves that's Mr. Chase because he speaks English and only
6 English.

7 Now show me Defense 3, and show me -- actually, show
8 me again part 2 and then part 3.

9 Here's another post from PlayPen. The pink part is
10 what somebody else is posting, whatever the chat was. And I
11 think I eluded to this with the witness. It turns out, you
12 know, some of us are sticklers for grammar, some aren't.
13 Turns out even sticklers for grammar even turn up on websites
14 like this. And somebody is complaining about the difference
15 between your and you're and two, to, and too. And PlayPen
16 gets irritated and replies.

17 I'm sorry. Can you just go over the reply again.

18 "Sorry, Ms. Perfect, English is not my or any of us
19 first language. More time loving, less time pointing your
20 finger, please."

21 Remember, this is in the one place where these folks
22 feel comfortable talking to each other about it and how they
23 feel about things. And that's somebody getting irritated
24 because, you know, they're struggling with English and that's
25 the best they can do. Is that Mr. Chase? Who? No evidence

1 that he's been involved in any other language or knows any
2 other language.

3 When you're looking at these posts and you're
4 deciding whether a particular post is something that he did or
5 could have been done by somebody else, I think you have to
6 keep in mind what the Judge is going to tell you that we can
7 not prove when somebody is innocent. The Government has to
8 prove they're guilty; bottom line.

9 In this case, other than Count Seven, I'm going to
10 leave that alone.

11 But go through the points that I told you. And what
12 I encourage you to do is take the time you need. You'll have
13 those exhibits, this post, or anything else up there available
14 to you to look at. Check the dates.

15 What I want you to do is go back there and I know
16 you can do the job you've sworn an oath to do. We knew it was
17 hard. And a lot of folks got out of jury duty this week
18 because they couldn't do it and you're the ones that can. So
19 I'm asking you to go back there and as to the things the
20 Government has not proved that he did, which is most of it,
21 frankly, I want you to find him not guilty. Thank you.

22 MR. JONES: In my opening statement I told you that
23 this was a very simple and a very straightforward case.
24 However, it was a very disturbing and a very troubling case,
25 and I believe you've seen that throughout the course of this

1 trial.

2 I also told you that the defendant would attempt to
3 confuse you, or attempt to try a case different than the one
4 charged in the indictment. This is exactly what defense
5 counsel has done. He's -- his entire closing argument is an
6 attempt to confuse. All of the evidence in this case, ladies
7 and gentlemen, has pointed to the defendant. Defense counsel
8 talks, makes a statement, his opening statement and argument,
9 that people lie and people use the internet to commit crimes.
10 And he's exactly right.

11 This Defendant, Steven Chase, used the internet to
12 engage in a child exploitation enterprise by working
13 together -- a website, a child pornography website with over
14 100,000 members dedicated to the sexual abuse of children on
15 line. Children that you saw were as young as toddlers. This
16 defendant is guilty.

17 I'll start just briefly because defense counsel
18 spent 20 minutes on his closing argument on one Russian post.
19 Mr. Chase posted over 200 times on this website. He spent 20
20 minutes of his closing argument on one post. A post, as you
21 heard Agent Alfin testify, that he could read easily. He said
22 you could get on Google and translate that post easily. The
23 purpose of the Tor -- of the Dark Web was to remain anonymous,
24 ladies and gentlemen of the jury.

25 Further, the defense makes a point that: Hey,

1 somebody hacked his account and created that Russian post. As
2 he testified -- Agent Alfin testified again that there has
3 been no indication that the account was hacked. The pin trap
4 and tracing speaks it. The pin track and trace indicates that
5 someone in his mom's home in Maine, and at his home in Naples,
6 Florida, was using Tor web, the Dark Web, at the same time the
7 PlayPen user account was logged into on the PlayPen website.

8 It doesn't make sense, ladies and gentlemen of jury.
9 Reasonable doubt, reason and common sense, that's all it is.
10 It just doesn't make sense.

11 And just briefly he talked also about the
12 advertisement, the registration agreement saying no
13 advertisement.

14 My co-counsel explained advertisement to you very
15 straightforward and very simple for you. Advertisement is
16 simply published to see with the intent to attract others to
17 that subject matter.

18 Mr. Chase posted on this child pornography website,
19 "Web Cam Three Girls," a thread he created with three females
20 exposing their genitals. That's an advertisement, ladies and
21 gentlemen. It attracted people to it. As a matter of fact,
22 it attracted over -- it was read over 8,000 times. That's
23 clearly an advertisement, ladies and gentlemen.

24 Defense also makes a statement that the Government
25 traced the payment and went into his house and the case is

1 over. That's just not the case. All of the evidence in this
2 case points to the defendant. Just look at another exhibit my
3 co-counsel stated, starting with the CentriLogic exhibit.
4 Which tracing back to the server hosting account, it was
5 traced back to his mom's house in Maine during the time he was
6 there. The Time Warner address being logged into. The
7 Comcast to his house. The Yahoo email, Mike Taylor, all of
8 the accounts logged onto his computer. They all point back to
9 the defendant. Nobody else but the defendant in this case,
10 ladies and gentlemen. As I told you, it's a simple and
11 straightforward case. Nobody but the defendant was the user
12 PlayPen on this account.

13 And he also failed to mention after they conducted
14 all of this analysis, CentriLogic, Time Warner, Comcast,
15 Yahoo, after all that led to Naples, Florida, on the night of
16 February 19, 2015, they get in the house, he's logged in, not
17 just into the PlayPen website but as the PlayPen username.
18 But he still wants you to think that, Hey, my -- somebody's
19 computer was hacked. It was somebody else. It doesn't make
20 sense. It doesn't make sense because it's not true.

21 Let's not forget the thumb drive that was connected
22 to the laptop which contained the image poster for PlayPen
23 website over 8,000 child exploitation images, passwords for
24 the user account Mike Taylor all over the defendant's laptop,
25 google searches for child pornography on Netflix.

1 Ladies and gentlemen, all of the evidence in this
2 case points back to the Defendant Steven Chase in his engaging
3 in a child exploitation enterprise, conspiring to advertise
4 child pornography, advertising child pornography, transporting
5 child pornography, and possessing child pornography. All
6 those three transportation counts were posted by the username
7 PlayPen and the username PlayPen was nobody but the Defendant
8 Steven Chase.

9 As I close, ladies and gentlemen of the jury, I just
10 like for you to remember that the defendant created this
11 website and ran it along with -- you saw the staff lists,
12 moderators, global moderators that he helped choose. But for
13 him there would not be this PlayPen website with over 100,000
14 members who were dedicated to the sexual abuse of children on
15 line.

16 All of the evidence in this case, ladies and
17 gentlemen, points to nobody else but the Defendant Steven
18 Chase. He's guilty of engaging in a child exploitation
19 enterprise, conspiracy to commit advertising, advertising, the
20 three transportation counts, and the possession of child
21 pornography, nobody but the defendant. The defendant and no
22 one else was the username PlayPen on that child pornography
23 website. Nobody else but him, ladies and gentlemen. So we
24 ask that you find this Defendant, Steven Chase, guilty on all
25 counts. Thank you.

1 THE COURT: Thank you all for your arguments.

2 Now, members of the jury, what we'll do is take a
3 15-minute break and then we will call for you to come back. I
4 will give you the rest of the instructions and then you will
5 be able to go to lunch and take up to maybe 45 minutes to an
6 hour. But when you all come back, you will be able to just
7 walk into the jury room, and as soon as all 12 of you are
8 there you may start your deliberations. And I will be talking
9 to the alternates about your role at that time. So that gives
10 you the immediate schedule.

11 Let's take a break. Keep an open mind about the
12 case. Don't discuss it at all. Remember all the instructions
13 and keep an open mind and we'll have the rest of the
14 instructions for you right after the break. Thank you.

15 (The jury was escorted from the courtroom.)

16 (Recess at 11:44 until 12:03.)

17 THE COURT: All right. Members of the jury, one
18 quick note. You, of course, have seen our court reporter who
19 has the hardest job in the courtroom. Who has taken a
20 transcript of the case, but it's not final or confirmed and we
21 haven't had a chance to review it or anything. And she always
22 does a beautiful job of polishing it if we need a transcript.
23 But you will not have a transcript of testimony available to
24 you so you have to remember the evidence.

25 Now then, I'll read to you as we go through the

1 counts from the Bill of Indictment, the statutes under which
2 the charges are laid and the essential elements of the
3 offenses. And the elements are important because they break
4 down the offense to the specific items the Government must
5 prove beyond a reasonable doubt before there could be a
6 conviction on a given count.

7 Now, as I think I may have told you before, you will
8 have copy of the indictment with you in the jury room so it is
9 not necessary for you to try to memorize exactly how the
10 charges are laid.

11 Also, please be patient in listening to these
12 instructions as your understanding of the charges against the
13 defendant will not be complete until you heard all of them
14 described, including the definitions that I will give you
15 about certain words and phrases.

16 I also note that the verdict sheet, which the clerk
17 will hand to you as you begin your deliberations, will contain
18 in some notations indicating how to move from one count to
19 another in making your decisions. So that should be
20 self-explanatory so I won't discuss that in these
21 instructions.

22 Now, in Count One, which I will now read to you. As
23 I remind you, the counts in the indictment are not evidence.
24 They're merely accusations.

25 Count One alleges that between on or about

1 August 19, 2014, and March 4, 2015, in Caldwell County, within
2 the Western District of North Carolina and elsewhere, Steven
3 W. Chase, Michael Fluckiger, David Lynn Browning did knowingly
4 engage in a child exploitation enterprise, that is, Steven W.
5 Chase, Michael Fluckiger and David Lynn Browning violated
6 Chapter 110 of Title 18 of the United States Code, as a part
7 of a series of felony violations constituting three or more
8 separate incidents and involving more than one minor victim,
9 which offenses include those described in Counts Three through
10 Seven of this indictment, for your purposes, and committed
11 those offenses in concert with three or more persons.

12 This is alleged in violation of Title 18,
13 Section 2252A(g).

14 Now in this Count One defendant is charged, as I
15 say, under Section 2252A(g). As you will hear, a conviction,
16 if any, under this statute will involve your findings and
17 consideration as to Counts Three through Seven of the Bill of
18 Indictment. But before I discuss those counts, I shall
19 describe Count One simply because it comes first in the Bill
20 of Indictment.

21 A person under this statute as it reads -- "A person
22 engages in a child exploitation enterprise for the purposes of
23 this section if the person violates sections within Chapter
24 110, as a part of a series of felony violations constituting
25 three or more separate incidents and involving one or more

1 victim, and commits those offenses in concert with three or
2 more persons."

3 Now such alleged underlying felony violations will
4 be referred to within these instructions as predicate
5 offenses.

6 So you have the charge which is Count One. You have
7 the predicate offenses which are alleged later on in the
8 indictment.

9 Now, in support of the Count One charge under that
10 Section 2252A(g), the Government alleges, as I said, three
11 predicate offenses found in Chapter 110 as charged in Counts
12 Three through Seven of the Bill of Indictment. Namely, that
13 Steven W. Chase, violated Title 18, Sections 2251(d),
14 2252A(a)(1), and 2252A(a)(5)(B).

15 The first of these predicate offenses is found in
16 Chapter 110 -- or as found in Chapter 110 is the advertising
17 charge which comes under Title 18, U.S. Code, Section 2251(d).
18 And that charge makes it a violation as follows:

19 Any person who, in circumstances described in
20 paragraph 2 below, knowingly makes, prints, or publishes, or
21 causes to be made, printed, or published, any notice or
22 advertisement seeking or offering to receive, exchange, buy,
23 produce, display, distribute, or reproduce, any visual
24 depiction, if the production of such visual depiction involves
25 the use of a minor engaging in sexually explicit conduct and

1 such visual depiction is of such conduct.

2 Secondly, this is paragraph two. The circumstance,
3 rather, referred to in paragraph 1 is that:

4 A. Such person knows or has reason to know that
5 such notice or advertisement will be transported using any
6 means or facility of interstate or foreign commerce or in or
7 affecting interstate or foreign commerce by any means
8 including by computer; or

9 B. Such notice or advertisement is transported
10 using any means or facility of interstate or foreign commerce
11 or in or affecting interstate or foreign commerce by any means
12 including by computer.

13 Now, the second of these predicate offenses
14 described in Chapter 110 is the transportation charge and it
15 sets forth the following law:

16 An individual violates Section 2252A(a)(1) if he
17 knowingly transports or ships using any means or facility of
18 interstate or foreign commerce or in or affecting interstate
19 or foreign commerce by any means, including by computer, any
20 child pornography.

21 And, finally, the third such predicate offense
22 described in Chapter 110, that would be the possession of
23 child pornography charge is as follows:

24 An individual violates Section 2252A(a)(5)(B), if he
25 knowingly possesses, or knowingly accesses with intent to

1 view, any film, videotape, computer disk, or any other
2 material that contains an image of child pornography that has
3 been mailed, or shipped or transported using any means or
4 facility of interstate or foreign commerce or in or affecting
5 interstate or foreign commerce by any means, including by
6 computer, or that was produced using materials that have been
7 mailed, shipped or transported in or affecting interstate or
8 foreign commerce by any means, including by computer.

9 When I instruct you on Counts Three through Seven of
10 the Bill of Indictment I will instruct you as to the elements
11 of each of these alleged predicate offenses, as well as the
12 relevant definitions of terms used within those alleged
13 predicate offenses.

14 Of course, I refer to the charges in Counts Three
15 through Seven of the Indictment as predicate offenses for
16 purposes of the child exploitation -- or, rather, for the
17 enterprise of child exploitation, but they also stand on their
18 own as to Counts Three through Seven, and you address each
19 count in this Bill of Indictment separately, and consider the
20 evidence that pertains to each count separately. And issue
21 your verdict as to each count accordingly. Even though as you
22 have heard, there are some relationships between some of the
23 counts.

24 Now then, so let's look at the essential elements of
25 Count One. This is how those elements break down the statute.

1 For you to find the defendant guilty of the offense
2 charged in Count One, the Government must establish each of
3 the following essential elements:

4 First, that defendant committed at least three
5 separate predicate offenses that comprise a series of at least
6 three instances; and

7 Secondly, the series of at least three instances
8 involve more than one victim who was a minor; and

9 Third, the defendant committed the series of at
10 least three instances in concert with three or more persons.

11 I will now define certain elements used in these
12 essential elements. You are to apply these definitions as you
13 consider the evidence. And if I don't define certain words,
14 you would assign to them their ordinary, everyday meanings.
15 Again, I'll provide you with the essential elements of each
16 specifically alleged predicate offense, along with the
17 relevant definitions to those offenses and elements, when I
18 instruct you on Counts Three through Seven.

19 You'll note that the Bill of Indictment with respect
20 to each offense charged, charges the offense or offenses were
21 committed "on or about" a certain date or dates. The proof
22 need not establish with certainty the exact date of an alleged
23 offense. It is sufficient if the evidence in the case
24 establishes beyond a reasonable doubt that the offense in
25 question was committed on a date reasonably near the date or

1 dates alleged in the indictment.

2 Now, a "predicate offense" is a separate and
3 additional offense underlying the offense charged in Count One
4 that the Government must establish the defendant committed
5 through proof beyond a reasonable doubt. For purposes of
6 Count One, the Government must prove that the defendant
7 committed three or more predicate offenses.

8 The offenses you may consider in determining whether
9 defendant committed three or more predicate offenses are found
10 in Chapter 110. And included in that, as I've already gone
11 over to some extent, you have offenses for Advertising Child
12 Pornography under Section 2251(d) as charged in Count Three;
13 and next, Transporting or Shipping Child Pornography in
14 violation of Section 2252A(a(1), and as charged in Counts
15 Four, Five and Six; and lastly, Possession of Child
16 Pornography in violation of Title 18, 2252A(a)(5)(b), and that
17 is charged in Count Seven.

18 Furthermore, at least three of the predicate
19 offenses must be separate from one another, in that each
20 predicate offense must arise out of a different event entirely
21 from the other predicate offenses.

22 Accordingly, you may rely on multiple violations of
23 the same statutory section within Chapter 110 to reach a total
24 of three predicate offenses so long as each violation of the
25 statute is separate from the other violations. Before you may

1 return a verdict of guilty as to Count One, you must
2 unanimously agree upon which three, or more, predicate
3 offenses the defendant committed, if any. And if you are
4 unable to unanimously agree upon which three, or more,
5 predicate offenses the defendant committed, then you must
6 return a verdict of not guilty even if you unanimously agree
7 that defendant committed a total of three, or more, predicate
8 offenses.

9 Finally, if you return a verdict of guilty on Count
10 One, the verdict form will ask you to identify which of the
11 alleged predicate offenses the Government has proven beyond a
12 reasonable doubt, if any.

13 Now then, a "minor" is any person under the age of
14 18 years.

15 Now I'll define the words and phrase "in concert
16 with three or more persons."

17 To find that the defendant acted "in concert with
18 three or more persons," you must unanimously agree that the
19 Government presented proof beyond a reasonable doubt that the
20 defendant agreed with three or more persons, himself included,
21 to commit the required series of predicate offenses. In other
22 words, the defendant and the individuals he allegedly acted in
23 concert with must have had an actual meeting of the minds
24 regarding the commission of the predicate offenses. In this
25 respect, the mental requirement for finding the defendant

1 acted "in concert" with three or more persons is the same as
2 the mental requirement for finding that defendant entered into
3 a criminal conspiracy with three or more persons.

4 Excuse me one moment.

5 I'm going to correct myself in terms of the
6 requirement that the Government show defendant acted "in
7 concert" with others.

8 The actual phrase in the statute is that "he would
9 have to have acted in concert with three or more other
10 persons." So the three persons he acted in concert with, if
11 any, would not include him.

12 Now then, going on to define this word -- this
13 phrase "in concert with three or more persons" that is the
14 mental element.

15 A criminal conspiracy is an agreement or a mutual
16 understanding knowingly made and knowingly entered into by
17 multiple people to violate the law through some joint plan or
18 common course of action. A conspiracy or agreement to violate
19 the law, like many other kinds of agreements or
20 understandings, need not be formal, written, or even expressed
21 directly in every detail.

22 And, again, this concerns whether the defendant
23 acted in concert with three or more others.

24 To prove the existence of an illegal agreement, the
25 Government is not required to produce evidence of a contract

1 or other agreement explicitly detailing all facets of the
2 understanding. Moreover, to prove a conspiracy or agreement,
3 the Government is not required to show that all the identified
4 members of the conspiracy or agreement were, in fact, parties
5 to the original agreement or that all of the members of the
6 agreement to all of the means and methods of accomplishing the
7 goal of the agreement.

8 Instead, the Government must prove that the
9 defendant and at least three other persons, whether the other
10 persons are also defendants or not, knowingly and deliberately
11 arrived at some type of agreement or understanding that they,
12 and perhaps others, would violate the law by some means of a
13 common plan or course of action as set forth in the Bill of
14 Indictment. It is proof of this conscious understanding and
15 deliberate agreement by the alleged member of the -- members
16 of the enterprise that should be central to your consideration
17 of this Count One charge.

18 Furthermore, the Government does not have to
19 demonstrate that defendant acted in concert with three or more
20 people to commit each of the predicate offenses composing this
21 series of instances. Instead, the Government need only
22 demonstrate that defendant acted in concert with three or more
23 other people over the course of the entire series of
24 instances. To conceptualize this, if you find that defendant
25 acted in concert with only one other person when committing

1 each of the three predicate offenses but that defendant acted
2 in concert with a different individual when committing each of
3 the predicate offenses, then defendant would have acted in
4 concert with three people over the series of instances.

5 The Government must show beyond a reasonable doubt
6 that the defendant committed each of the three, or more,
7 predicate offenses knowingly. And that is the mental element
8 of the offense.

9 The word "knowingly," as used in these instructions
10 to describe the alleged state of mind of the defendant, means
11 that he was conscious and aware of his actions, realized what
12 he was doing or what was happening around him, and did not act
13 because of ignorance, mistake or accident. Knowledge may be
14 proven by a defendant's conduct, and by all of the facts and
15 circumstances surrounding the case.

16 The purpose of adding the element "knowingly" is to
17 insure that no one will be convicted due to mistake or,
18 accident, or other innocent reason.

19 So summing up on Count One, I charge you that if you
20 find from the evidence beyond a reasonable doubt that on or
21 about the date or dates alleged, within the Western District
22 of North Carolina, that:

23 1. Defendant committed at least three separate
24 predicate offenses that comprise a series of at least three
25 instances; and

1 2. That the series was -- excuse me, a series of at
2 least three instances involved more than one victim who was a
3 minor; and

4 3. That defendant committed the series of at least
5 three instances in concert with three or more other persons,
6 then it would be your duty to return a verdict of guilty -- of
7 guilty as charged in Count One. And, however, if you do not
8 so find, if you have a reasonable doubt as to one or more of
9 the essential elements of the crime charged, then it would be
10 your duty to give him the benefit of that doubt and return a
11 verdict of not guilty on Count One.

12 I will move to Count Two.

13 Defendant is charged under Section 2251(d) and (e).

14 Subsection (d) describes the offense of Advertising
15 Child Pornography. While subsection (e) makes it a crime to
16 conspire to commit the offense of Advertising Child
17 Pornography. This part of the instructions deals with the
18 conspiracy charge in Count two, that's the conspiracy to
19 commit the advertising offense. And you will consider that
20 separately from Count Three when I get to it, which is the
21 standalone offense of Advertising Child Pornography. We also
22 call that a substantive offense, whereas the one I'm about to
23 go into is Count Two, the conspiracy offense. You see there's
24 obviously a relationship there.

25 You will be looking at Count Three a little bit

1 later and that is the substantive count of Advertising Child
2 Pornography. But that has its own instructions that pertain
3 to it, and so does this charge of Conspiracy to Advertise
4 Child Pornography which I will now give to you.

5 Now Count Two reads as follows:

6 Between, on or about August 19, 2014, and March 4,
7 2015, in Caldwell County, within the Western District of North
8 Carolina and elsewhere, Steven W. Chase, Michael Fluckiger,
9 and David Lynn Browning did knowingly conspire to make, print,
10 publish, and cause to be made, printed, and published, any
11 notice or advertisement seeking and offering to receive,
12 exchange, buy, produce, display, distribute, and reproduce,
13 any visual depiction, the production of which visual depiction
14 involved the use of a minor engaged in sexually explicit
15 conduct and such visual depiction was of such conduct; and
16 participation in any act of sexually explicit conduct by and
17 with any minor for the purpose of producing a visual depiction
18 of such conduct; knowing and having reason to know that such
19 notice and advertisement would be transported using any means
20 and facility of interstate and foreign commerce and in and
21 affecting interstate and foreign commerce by any means,
22 including by computer, and such notice and advertisement was
23 transported using any means and facility of interstate and
24 foreign commerce and in and affecting interstate and foreign
25 commerce by any means including computer.

1 Now then, I'm going to read to you the offense that
2 is alleged in Count Two to be the object of the conspiracy
3 alleged in Count Two. And as you heard before, this is
4 Section 2251(d), and it will sound familiar because that's the
5 offense. It alleges, that is to say, the statute reads as
6 follows:

7 Any person who, in a circumstance described in
8 paragraph 2, knowingly makes, prints, or publishes, or causes
9 to be made, printed, or published, any notice or advertisement
10 seeking or offering to receive, exchange, buy, produce,
11 display, distribute, or reproduce, any visual depiction, if
12 the production of such visual depiction involves the use of a
13 minor engaging in sexually explicit conduct, and with such
14 visual depiction -- or, rather, such depiction is of such
15 conduct, or that participation in any act of sexually explicit
16 conduct by or with any minor for the purpose of producing a
17 visual depiction of such conduct.

18 Now, the circumstance referred to in paragraph 2
19 comes under the following language:

20 The circumstance referred to is that:

21 A. Such person knows or has reason to know that
22 such notice or advertisement will be transported using any
23 means or facility of interstate or foreign commerce or in or
24 affecting interstate or foreign commerce by any means
25 including by computer; or

1 Such notice or advertisement is transported using
2 any means or facility of interstate or foreign commerce or in
3 or affecting interstate or foreign commerce by any means
4 including by computer.

5 So as I explained earlier, Section 2251 makes it a
6 crime for an individual to conspire to commit the offense
7 described in subsection (d).

8 Subsection (d) will be the subject of Count Three
9 standing alone, and I'll get to that a little bit later.

10 But here we are with the essential elements of Count
11 Two, a Conspiracy to Advertise Child Pornography.

12 These are the essential elements:

13 For you to find him guilty of the offense charged in
14 Count Two the Government must establish each of the following
15 essential elements:

16 On or within the dates alleged, and within the
17 Western District of North Carolina, and elsewhere:

18 First, that the conspiracy described in the Bill of
19 Indictment was an agreement or understanding between two or
20 more persons, that the conspiracy was willfully formed, and
21 that it was existing at the time alleged in the Bill of
22 Indictment;

23 Secondly, that at some time during the existence or
24 life of the conspiracy, the defendant knew the purpose of the
25 agreement or understanding and willfully joined the

1 conspiracy; and

2 Lastly, that the object of the conspiracy was to
3 Advertise Child Pornography, in violation of 18 U.S. Code
4 2251(d).

5 You will use the same definitions I gave you earlier
6 to define "minor" and "knowingly."

7 I'll now give you additional definitions pertinent
8 to the conspiracy aspect of the charge in Count Two. I'll
9 give you definitions relevant to the object of the conspiracy,
10 the offense of Advertising Child Pornography, when instructing
11 you on Count Three.

12 A criminal conspiracy is an agreement or a mutual
13 understanding knowingly made or knowingly entered into by at
14 least two people to violate the law by some joint or common
15 plan or course of action. A conspiracy is, in a very true
16 sense, a partnership in crime.

17 A conspiracy or agreement to violate the law, like
18 any other kind of agreement or understanding, need not be
19 formal, written, or even expressed directly in every detail.

20 To prove the existence of a conspiracy or an illegal
21 agreement, the Government is not required to produce a written
22 contract between the parties or even produce evidence of an
23 express oral agreement spelling out all the details of the
24 understanding. Moreover, to prove that a conspiracy existed,
25 the Government is not required to show that all of the people

1 named in the indictment as members of the conspiracy, in fact,
2 were parties to the original agreement, or that all of the
3 members of the alleged conspiracy were named or charged, or
4 that all of the people whom the evidence shows were actually
5 members of a conspiracy agreed to all of the means or methods
6 set out in the indictment.

7 Instead, the Government must prove that the
8 defendant and at least one other person knowingly and
9 deliberately arrived at an agreement or understanding that
10 they, and perhaps others, would violate the law by means of
11 some common plan or course of action as alleged in Count Two.
12 In other words, unlike in Count One where the Government
13 needed to prove the defendant agreed with three, or more,
14 people to commit the series of three instances, proof that
15 defendant agreed with at least one other person to violate
16 Section 2251(d), the advertising offense, is sufficient for
17 purposes of Count Two. It is proof of this conscious
18 understanding and deliberate agreement by the alleged members
19 that should be central to your consideration of the charge of
20 conspiracy.

21 Unless the Government proves beyond a reasonable
22 doubt that a conspiracy, as just explained, actually existed,
23 then you must acquit defendant of the charge in Count Two.

24 Now then, as to membership in the agreement. If you
25 should conclude that the conspiracy did exist as alleged, you

1 should next determine whether defendant knowingly and
2 willfully became a member of the conspiracy. That is, whether
3 the defendant in question knowingly and willfully became a
4 member. Before the jury may find that the defendant, or any
5 other person, became a member of the conspiracy charged in
6 Count Two, the evidence in the case must show beyond a
7 reasonable doubt that defendant knew the purpose or goal of
8 the agreement or understanding and deliberately entered into
9 the agreement intending, in some way, to accomplish the goal
10 or purpose of this common plan.

11 If the evidence establishes beyond a reasonable
12 doubt that defendant knowingly and deliberately entered into
13 an agreement to Advertise Child Pornography, the fact that
14 defendant did not join the beginning -- joined the agreement,
15 rather, at its beginning, or did not know all of the details
16 of the agreement, or did not play a major role in
17 accomplishing the unlawful goal is not important to your
18 decision regarding membership in the conspiracy.

19 On the other hand, certain things do not, taken
20 alone, make someone a member of a conspiracy. Merely
21 associating with others and discussing common goals, mere
22 similarity of conduct between or among such persons, merely
23 being present at the place where the crime took place or is
24 discussed, or even knowing about criminal conduct does not, by
25 itself, make someone a member of a conspiracy.

1 Now, concerning the object of the conspiracy. If
2 you concluded that the conspiracy did exist as alleged, and
3 that the defendant in question knowingly became a member of
4 it, then you should next determine whether or not an objective
5 or goal of the alleged conspiracy was to Advertise Child
6 Pornography as alleged.

7 Now, ultimately, the Government must prove beyond a
8 reasonable doubt that a conspiracy was willfully formed and
9 had as its purpose the Advertising of Child Pornography. You
10 should make your determination as to the purpose of a
11 conspiracy from all the evidence presented. Keep in mind
12 there may be a conviction as to this conspiracy count even
13 though the conspirators may not have succeeded in
14 accomplishing their common object or purpose in some way or
15 ways and, in fact, failed in accomplishing it.

16 So then, reiterating the essential elements. If you
17 find from the evidence beyond a reasonable doubt that on or
18 about the date or dates alleged, within the Western District
19 of North Carolina and elsewhere:

20 First, that the conspiracy described in the Bill of
21 Indictment, Count Two, was an agreement or understanding
22 between two or more persons, that the conspiracy was willfully
23 formed, and that it was existing at the time alleged in the
24 Bill of Indictment; and

25 Second, that at some time during the existence or

1 life of the conspiracy, the defendant knew the purpose of the
2 agreement and understandingly and willfully joined it; and

3 Third, that the object of the conspiracy was to
4 Advertise Child Pornography, in violation of 18 U.S. Code
5 2251(d) and (e), then it would be your duty to return a
6 verdict of guilty as charged in Count Two. However, if you do
7 not so find, or if you have a reasonable doubt as to one or
8 more of the essential elements of the crime charged, as I have
9 just given them to you, then it would be your duty to give the
10 defendant the benefit of that doubt and return a verdict of
11 not guilty on Count Two.

12 Now then, in Count Three, the Defendant, Steven W.
13 Chase is charged with violating Title 18 Section 2251(d).

14 The pertinent part of this statute for purposes of
15 this count are as follows:

16 1. Any person who, in a circumstance described in
17 paragraph 2 below, knowingly makes, prints, or publishes, or
18 causes to be made, printed, or published, any notice or
19 advertisement seeking or offering:

20 To receive, exchange, buy, produce, display,
21 distribute, or reproduce, any visual depiction, if the
22 production of such visual depiction involves the use of a
23 minor engaging in sexually explicit conduct and such visual
24 depiction is of such conduct; and

25 2. The circumstance referred to in paragraph 1

1 would be that:

2 A. Such person knows or has reason to know that
3 such notice or advertisement would be transported using any
4 means or facility of interstate or foreign commerce or in or
5 affecting interstate or foreign commerce by any means
6 including by computer; or

7 Such notice or advertisement is transported using
8 any means or facility of interstate or foreign commerce or in
9 or affecting interstate or foreign commerce by any means
10 including by computer.

11 So here is how the essential elements of this count
12 break down.

13 The substantive or stand alone offense of
14 Advertising Child Pornography.

15 For you to find the defendant guilty of the offense
16 charged in Count Three of the Bill of Indictment, the
17 Government must establish each of the following essential
18 elements:

19 First, that the defendant knowingly made, printed,
20 published, or caused to be made, printed, or published, a
21 notice or advertisement;

22 Second, the notice or advertisement sought or
23 offered to receive, exchange, buy, produce, display,
24 distribute, or reproduce a visual depiction; and

25 Third, the production of the visual depiction

1 involved the use of a minor engaging in sexually explicit
2 conduct, and the visual depiction is of the sexually explicit
3 conduct;

4 And the defendant knew that the person the
5 advertisement sought or offered a visual depiction of was a
6 minor; and

7 5(a), The defendant knew or had reason to know that
8 the notice or advertisement would be transported using any
9 means or facility of interstate or foreign commerce, including
10 by a computer; or

11 (b), The notice or advertisement was transported
12 using any means or facility of interstate or foreign commerce,
13 including by computer.

14 As you recall I've already defined "minor" and
15 "knowingly." I will give you other definitions pertinent to
16 this offense which you should consider.

17 A notice or advertisement is a published or
18 transmitted matter that makes a particular thing known. A
19 notice or advertisement is made with the intention of
20 attracting others to the subject matter of the notice or
21 advertisement. Furthermore, in determining whether something
22 is a notice or advertisement, you should consider the context
23 in which the alleged notice or advertisement is made, printed,
24 published, and/or disseminated, such that a printing or
25 publication that implicitly offers or seeks out a visual

1 depiction of child pornography may qualify as a notice or
2 advertisement.

3 Now the phrase "visual depiction" includes
4 undeveloped film and videotape, data stored on a computer disk
5 or by electronic means which is capable of conversion into a
6 visual image, and data that is capable of conversion into a
7 visual image that has been transmitted by any means, whether
8 or not stored in a permanent format.

9 The term "sexually explicit conduct" means actual or
10 simulated:

- 11 a. Sexual intercourse, including
12 genitalia-genitalia, oral-genitalia, anal-genitalia, oral-anal
13 contact, whether between persons of the same or opposite sex;
- 14 b. Bestiality;
- 15 c. Masturbation;
- 16 d. Sadistic or masochistic abuse; or
- 17 e. Lascivious exhibition of the genitals or pubic
18 area of any person.

19 Now, regarding the last type of sexually explicit
20 conduct, "lascivious exhibition," not every exposure of the
21 genitals or pubic area constitutes a lascivious exhibition.
22 In determining whether -- excuse me.

23 In determining whether a visual depiction
24 constitutes a lascivious exhibition, you should consider the
25 context and setting in which the genitalia or pubic area is

1 being displayed. You may consider the overall content of the
2 material. You may also consider such facts as whether the
3 focal point of the visual depiction is on the minor's
4 genitalia or pubic area, or whether there is some other focal
5 point. You may consider whether the setting of the depiction
6 is such as to make it appear to be sexually inviting or
7 suggestive; for example, in a location or in a pose associated
8 with sexual activity. In addition, you may consider whether
9 the minor appears to be displayed in an unnatural pose or in
10 an appropriate -- or inappropriate attire. You may also
11 consider whether the minor is partially clothed or nude. You
12 may consider whether the depiction appears to convey sexual
13 coyness or an apparent willingness to engage in sexual
14 activity, and whether the depiction appears to have been
15 designed to elicit a sexual response in the viewer. A visual
16 depiction need not involve all of these factors to be a
17 lascivious exhibition. Excuse me a moment.

18 The term "interstate or foreign commerce" means the
19 movement of property from one state to another state or from
20 one state to another country. The term "State" for this
21 purpose includes a State of the United States, the District of
22 Columbia, and any Commonwealth, Territory, or possession of
23 the United States. Proof that material moved over the
24 internet is sufficient to demonstrate that the material
25 traveled in interstate or foreign commerce. Finally, it is

1 not necessary for the Government to prove that defendant knew
2 that the alleged child pornography had moved in interstate or
3 foreign commerce, only that it had so moved.

4 The term "computer" means an electronic, magnetic,
5 optical, electrochemical, or other high speed data processing
6 device performing logical, arithmetic, or storage functions,
7 and includes any data storage facility or communications
8 facility directly related to or operating in conjunction with
9 such device, but such term does not include an automated
10 typewriter or typesetter, a portable hand-held calculator, or
11 other similar device.

12 So breaking down Count Three again, and reiterating
13 the essential elements, I charge you that if you find from the
14 evidence beyond a reasonable doubt that on or about the date
15 or dates alleged and within the Western District of North
16 Carolina or elsewhere:

17 Defendant knowingly made, printed, published, or
18 caused to be made, printed, or published, a notice or
19 advertisement;

20 Second, the notice or advertisement sought or
21 offered to receive, exchange, buy, produce, display,
22 distribute, or reproduce a visual depiction; and

23 3. The production of the visual depiction involved
24 the use of a minor engaging in sexually explicit conduct, and
25 the visual depiction is of the sexually explicit conduct; and

1 4. The defendant knew that the person the
2 advertisement sought or offered a visual depiction of was a
3 minor; and

4 5(a). That defendant knew or had reason to know
5 that the notice or advertisement would be transported using
6 any means or facility of interstate or foreign commerce,
7 including by computer; or

8 B. The notice or advertisement was transported
9 using any means or facility of interstate or foreign commerce,
10 including by computer;

11 And if you find those to have been proven beyond a
12 reasonable doubt, it would be your duty to return a verdict of
13 guilty as charged in Count Three.

14 However, if you do not so find, or if you have
15 reasonable doubt as to one or more of the essential elements
16 of the crime charged, then it would be your duty to give
17 defendant the benefit of the doubt and return a verdict of not
18 guilty on Count Three.

19 Now we come to Counts Four, Five and Six which will
20 be charged -- rather, instructed on at one sitting, you might
21 say, because they all involve the same statute, the same
22 alleged violation.

23 First I'll read to you the statute, that is to say,
24 the indictment.

25 Count Four alleges that on or about February 1,

1 2015, in Caldwell County, within the Western District of North
2 Carolina and elsewhere, Steven W. Chase knowingly transported
3 and shipped, using any means and facility of interstate or
4 foreign commerce, and in or affecting interstate or foreign
5 commerce by any means, including by computer, any child
6 pornography as defined in Title 18 U.S. Code Section
7 2256(8)(A). All in violation of Title 18 U.S. Code Section
8 2252A(a)(1).

9 Now Count Five alleges exactly the same offense in
10 the same words, except it alleges that it occurred on or about
11 October 12, 2014.

12 And Count Six involves the same charge in the same
13 wording except that it is alleged to have occurred on or about
14 September 26, 2014.

15 So the dates then of Four, Five and Six would be
16 February 1, 2015, October 12, 2014, and September 26, 2014, in
17 Counts Four, Five and Six, sequentially. So that we'll
18 instruct on those three counts all the instructions pertaining
19 to each count individually, and you should apply the evidence
20 individually as to each count according to the offense charged
21 and the date alleged on which it is alleged to have occurred.

22 Now, the Section 2252A(a)(1) states:

23 Any person who knowingly transports or ships using
24 any means or facility of interstate or foreign commerce or in
25 or affecting interstate or foreign commerce by any means,

1 including by computer, any child pornography shall be punished
2 as provided in subsection b.

3 Now then, the essential elements then for these
4 three offenses are the same.

5 For you to find the defendant guilty of the offense
6 charged in Count Four, Five or Six, considering the evidence
7 separately as to each count, the Government must establish
8 beyond a reasonable doubt each of the following essential
9 elements:

10 First, that defendant knowingly transported or
11 shipped material using any means or facility in interstate or
12 foreign commerce or in or affecting interstate or foreign
13 commerce by any means, including by computer;

14 Second, that the material is child pornography; and

15 Third, that defendant knew that one or more persons
16 depicted in the material was a minor.

17 Now then, you are to use the same definitions I gave
18 you earlier for the word "minor, visual depiction, sexually
19 explicit conduct, interstate or foreign commerce, computer and
20 knowingly."

21 I'll now give you an additional definition which you
22 should consider as to these three counts, Counts Four, Five
23 and Six.

24 "Child pornography" means any visual depiction,
25 including any photograph, film, video, picture, or computer,

1 or computer-generated image or picture, whether made or
2 reproduced -- or produced by electronic, mechanical, or other
3 means, of sexually explicit conduct, where the production of
4 the visual depiction involves the use of a minor engaging in
5 sexually explicit conduct.

6 So, members of the jury, reiterating the elements of
7 this offense, which as I have said, applies to all Counts
8 Four, Five and Six, independently.

9 First, that defendant on or about the date or dates
10 alleged within the Western District of North Carolina or
11 elsewhere:

12 Defendant knowingly transported or shipped material
13 using any means or facility in interstate or foreign commerce
14 or in or affecting interstate or foreign commerce by any
15 means, including by computer; and

16 Second, that the material was child pornography;

17 Third, that the defendant knew that one or more
18 persons depicted in the material was a minor, then it would be
19 your duty to return a verdict of guilty as charged in Count
20 Four, Five and Six respectively. However, if you do not so
21 find as to either or any of these counts, or if you have a
22 reasonable doubt as to one or more of the essential elements
23 of the crime charged as it related to Counts Four, Five or
24 Six, then it would be your duty to give the defendant the
25 benefit of that doubt and return a verdict of not guilty as to

1 any or all of these counts according to how you find.

2 Now, the last count is Count Seven, Possession of
3 Child Pornography.

4 In Count Seven the Defendant, Steven W. Chase, is
5 charged with violating Title 18 U.S. Code Section
6 2252A(a)(5)(B).

7 And Count Seven reads as follows:

8 Again, it is not evidence.

9 It alleges that between, on or about August 19,
10 2014, and February 17, 2015, in Caldwell County, within the
11 Western District of North Carolina, and elsewhere, Steven W.
12 Chase knowingly possessed any film, videotape, computer disk,
13 and any other material that contained an image of child
14 pornography as described, or rather, defined in Title 18
15 Section 2256A(8) -- excuse me, (8)(A), that involved a minor
16 who had not attained 12 years of age, and that has been
17 mailed, and shipped, and transported using any means and
18 facility of interstate and foreign commerce, and in and
19 affecting interstate and foreign commerce by any means,
20 including by computer, and that was produced using materials
21 that have been mailed, shipped, and transported in and
22 affecting interstate and foreign commerce by any means
23 including by computer.

24 All in violation of 18 U.S. Code 2252A(a)(5)(B).

25 Now that statute reads as follows:

1 Any person who knowingly possesses any film,
2 videotape, computer disk or any other material that contains
3 an image of child pornography that has been mailed or shipped
4 or transported using any means or facility of interstate or
5 foreign commerce, or in or affecting interstate or foreign
6 commerce by any means, including by computer, or that was
7 produced using materials that have been mailed or shipped or
8 transported in or affecting interstate or foreign commerce by
9 any means, including by computer, shall be punished as
10 provided by law.

11 Now, for you to find the defendant guilty of the
12 offense charged in Count Seven, the Government must establish
13 beyond a reasonable doubt each of the following essential
14 elements:

15 That at or about -- within the Western District of
16 North Carolina, at or about the time alleged, the defendant
17 knowingly possessed any film, videotape, computer disk, or
18 other material; and

19 Second, that the film, videotape, computer disk, or
20 other material contained at least one image of child
21 pornography; and

22 Third, the defendant knew that one or more persons
23 depicted in the film, videotape, computer disk, or other
24 material, was a minor; and

25 The film, videotape, computer disk, or other

1 material had been mailed or shipped or transported using any
2 means or facility of interstate or foreign commerce or in or
3 affecting interstate or foreign commerce by any means,
4 including by computer, or that was produced using materials
5 that had been mailed or shipped or transported in or affecting
6 interstate or foreign commerce by any means, including by
7 computer, those are the first four of these elements.

8 Additionally, should you conclude that the
9 Government established each of the above elements, you shall
10 then consider whether the Government established through proof
11 beyond a reasonable doubt that the minor depicted in the child
12 pornography had not attained 12 years of age; and

13 Secondly, that defendant knew the minor depicted in
14 the child pornography had not attained 12 years of age.

15 There will be a place on the verdict sheet for you
16 to address that secondary question should you reach that
17 issue.

18 Now then, you are to use the same definition I gave
19 you earlier to define "minor, visual depiction, sexually
20 explicitly conduct, interstate or foreign commerce, computer,
21 child pornography, and knowingly."

22 I'll now give you one additional definition
23 pertinent to the offense of Possession of Child Pornography,
24 which you should consider regarding Count Seven.

25 The word "possess" as in reference to possessing

1 materials -- the word "possess" means to own or exert control
2 over. The word "possession" can take on several different but
3 related means.

4 The law recognizes two kinds of possession; actual
5 and constructive. A person who knowingly has direct physical
6 control over a thing at a given time is then in actual
7 possession of it. A person who, although not in actual
8 possession, knowingly has both the power and the intention at
9 a given time to exercise dominion or control over a thing,
10 either directly or through another person or persons, is then
11 in constructive possession of it.

12 The law recognizes that "possession" may be sole or
13 joint. If one person alone has actual or constructive
14 possession of a thing, then possession is sole. If two or
15 more persons share actual or constructive possession of a
16 thing, then possession is joint.

17 You may find that the element of "possession," as
18 that term is used in these instructions, is present if you
19 find beyond a reasonable doubt that the defendant had actual
20 or constructive possession, either alone or jointly with
21 others.

22 So in wrapping up Count Seven the following
23 essential elements I shall reiterate for you.

24 If you find beyond a reasonable doubt from the
25 evidence that on or about the date alleged, within the Western

1 District of North Carolina, and elsewhere:

2 The defendant knowingly possessed any film,
3 videotape, computer disk, or other material; and

4 The film, videotape, computer disk, or other
5 material contained at least one image of child pornography;
6 and

7 Third, the defendant knew that one or more persons
8 depicted in the film, videotape, computer disk, or other
9 material was a minor; and

10 The film, videotape, computer disk, or other
11 material had been mailed or shipped or transported using any
12 means or facility of interstate or foreign commerce or in or
13 affecting interstate or foreign commerce by any means
14 including by computer, or that was produced using materials
15 that have been mailed, shipped, or transported in or affecting
16 interstate or foreign commerce by any means including by
17 computer, then it would be your duty to return a verdict of
18 guilty as charged in Count Seven. However, if you do not so
19 find or if you have a reasonable doubt as to one or more of
20 the essential elements of the crime charged, then it would be
21 your duty to give the defendant the benefit of that doubt and
22 return a verdict of not guilty on Count Seven.

23 If you return a verdict of guilty as to Count Seven
24 as I have now described it, then you must consider the
25 following question whether:

1 1. The minor depicted in the child pornography had
2 not obtained 12 years of age; and

3 Secondly, whether defendant knew the minor depicted
4 in the child pornography had not attained 12 years of age.

5 Now then, you've heard the evidence and the
6 arguments of counsel for both parties. It is your duty to
7 remember the evidence whether it has been called to your
8 attention or not, and if your recollection of the evidence
9 should differ from that of the attorneys, you are to rely
10 solely upon your recollection of the evidence in your
11 deliberations.

12 I have not reviewed the contentions of the parties,
13 but it is your duty not only to consider all the evidence, but
14 also the arguments, the contentions and positions urged by the
15 attorneys in their speeches to you and any other contention
16 that arises from the evidence, and to weigh them all in the
17 light of your common sense, and as best you can determine the
18 truth of this matter.

19 The law, as indeed it should, requires the presiding
20 judge to be impartial. Therefore, do not assume from anything
21 that I may have said or done during the trial that I have any
22 opinion concerning any of the issues before you in this case.

23 I instruct you that a verdict is not a verdict until
24 all 12 jurors agree unanimously as to what your decision shall
25 be. You may not render a verdict by majority vote or any

1 other voting mechanism aside from unanimous verdict of 12.
2 And that pertains to all of the various decisions to be made
3 as suggested to you by the verdict sheet and the various
4 blanks that you will be asked to fill out in that regard.

5 The Court suggests that as soon as you reach the
6 jury room, before beginning deliberations, you select one of
7 your members to serve as foreperson. This individual has the
8 same vote as the rest of the jurors, but simply serves to
9 preside over the discussions. Once you begin deliberating, if
10 you need to communicate with me, the foreperson would send a
11 written message to me by knocking on the door and handing it
12 to the Marshal. However, you are not to tell me how you may
13 stand numerically as to your verdict at any given time. For
14 instance, should you be split in your voting at a particular
15 time, you would not tell me the specific numbers of division
16 in your note.

17 We use a verdict sheet. And this is simply the
18 written notice of the decision that you reach in the case. As
19 soon as you've reached a verdict your foreperson will, as you
20 go along, fill it out as to all the unanimous decisions and
21 you would then return to the courtroom and your foreperson
22 will, on request, hand the verdict sheet to the clerk. There
23 are places on the verdict sheet for the foreperson to enter
24 the verdict, sign it and date it.

25 Now during the trial several items were received

1 into evidence as exhibits. You will have access to most of
2 the trial exhibits through what we call the J-E-R-S program
3 that will be explained to you by the Clerk.

4 During your deliberations, you must not communicate
5 with or provide any information to anyone by any means about
6 this case. You may not use any electronic device or media,
7 such as a cell phone, smart phone, like Blackberries or
8 iPhones, or computers of any kind; the internet, any internet
9 service, or any text, or instant messaging service like
10 Twitter, or any internet chat room, blog, website or social
11 networking service, such as Facebook, My Space, LinkedIn or
12 You Tube to communicate to anyone, any information about this
13 case or to conduct any research about this case until I
14 finally accept your verdict.

15 Now, if you need a break during your deliberations,
16 you may do so in the jury room, or if it's a smoke break, then
17 outside the jury room escorted by a marshal. But you must not
18 deliberate during a break unless all twelve of you are
19 together at the time. And if not together, then do not talk
20 about the case until all of you are back together.

21 Now, does either side request a sidebar concerning
22 these instructions at this time?

23 MS. RANDALL: No, Your Honor.

24 MR. ADOLF: No, Your Honor.

25 THE COURT: All right. Thank you.

1 So the way that we'll handle the lunch hour, members
2 of the jury, I would, as I said earlier, I would dismiss you
3 for lunch. And it is now a little after 1:00. Let's say if
4 you would endeavor to be back somewhere around quarter of 2:00
5 then that gives you about 45 minutes. But you can have an
6 hour, whatever it takes for you to have lunch. But the way it
7 works is that when you come back to the courthouse, you come
8 to this jury room and go on in there and the marshal will be
9 checking people in. As soon as the 12 of you are ready, the
10 first 12 here are present, then you may start deliberating.
11 And I will speak to you four alternates here in just a moment.

12 Our law clerk, Mr. Miller, has advised that I didn't
13 read to you Count Three of the indictment.

14 Would the parties request that Count Three be read
15 from the indictment?

16 MS. RANDALL: Your Honor, the indictment will be
17 sent back with the jurors for their review; is that correct?

18 THE COURT: I beg your pardon?

19 MS. RANDALL: A copy of the indictment will be sent
20 back for them to review.

21 THE COURT: They will have a copy of the indictment.
22 And this is the Advertising allegation, the substantive count.

23 I think I'll read it to you, members of the jury,
24 won't take but a second. I'm sure you'll feel familiar with
25 it, but for clarity we'll read it.

1 It alleges that between, on or about August 19,
2 2014, and March 4, 2015, in Caldwell County, within the
3 Western District of North Carolina and elsewhere, Steven W.
4 Chase, Michael Fluckiger, David Lynn Browning:

5 Did knowingly make, print, and publish, and cause to
6 be made, printed, and published, any notice or advertisement
7 seeking and offering to receive, exchange, buy, produce,
8 display, distribute, and reproduce any visual depiction, the
9 production of which visual depiction involved the use of a
10 minor engaging in sexually explicit conduct, and such visual
11 depiction was of such conduct; and participation in any act of
12 sexually explicit conduct by and with any minor for the
13 purpose of producing a visual depiction of such conduct;
14 knowing and having reason to know that such a notice and
15 advertisement would be transported using any means or facility
16 of interstate and foreign commerce, and in and affecting
17 interstate and foreign commerce by any means, including by
18 computer, and such notice and advertisement was transported
19 using any means and facility of interstate and foreign
20 commerce, and in and affecting interstate and foreign commerce
21 by any means including by computer, alleged to be in violation
22 of Section 2251.

23 So thank you, members of the jury.

24 Now then, I'll dismiss you for lunch. While you are
25 at lunch, don't discuss the case. Keep an open mind about it.

1 Don't use any electronic media as I just described and you'll
2 begin deliberating as soon as 12 of you check back in. Thank
3 you.

4 (The jury was escorted from the courtroom at 1:09.)

5 THE COURT: Now, the regular jurors have left. I
6 want to thank you very much for your participation in this
7 case. As it happens, it will be the better part of wisdom if
8 you would stay with us until the jury reaches a verdict. The
9 reason for that is that sometimes one of these jurors would
10 have a sick child call from home or something and/or a parent
11 or somebody who's ailing or any number of things that would
12 cause a juror to be called away and have to go attend to
13 something. And in which case without having 12 jurors we
14 would have to start all over again, do the whole trial over.
15 Of course it's very expensive to do that, and so forth. So by
16 having the alternates we are blessed to have you with us and
17 willing and able to serve.

18 What I would ask you to do is go ahead and go to
19 lunch. When you come back, Ms. Johnson will show you where to
20 go, in fact, she may do it now, so you'll be comfortable until
21 the jury reaches a verdict. If the jury comes in and wants a
22 question to be asked. We will bring you all back for purposes
23 of hearing just what they hear in response to any question. I
24 don't anticipate that would be necessary or that it would
25 happen.

1 But in any event, I would ask you to keep an open
2 mind about the case, don't discuss it with one another or
3 anyone else, and to follow all the instructions I've given the
4 jury up until now. And then should it happen that one or more
5 individuals within the jury can't continue, we would replace
6 such a juror or jurors with you in sequential order there, and
7 that will enable us to ensure we'll get a verdict on this case
8 and it won't have to be retried. Thank you so much for your
9 help in that regard.

10 THE DEPUTY CLERK: Judge, should they leave their
11 notebooks here, the alternates?

12 THE COURT: That will be fine.

13 (The alternate jurors were excused.)

14 THE COURT: Will it be the pleasure of the parties
15 to put in the record the written ruling on the 401 and Rule
16 403 rulings?

17 MR. ADOLF: Yes, sir. That would be our request.

18 THE COURT: All right. That will be a Court exhibit
19 I take it.

20 MS. RANDALL: Your Honor, two other just quick
21 housekeeping matters since it sounds like the jury is going to
22 be deliberating as soon as they come back. The indictment
23 that's going to be sent back to them, I assume will redact all
24 charges after Count Seven through the signature?

25 THE COURT: That's correct, and the forfeiture

1 language.

2 MS. RANDALL: And then the charges relating to the
3 other defendants. And then one other matter, I want to make
4 it clear on the record. When we submitted our documents for
5 the JERS system to be submitted to the -- for the jurors. We
6 removed Government's Exhibit 5 and 14 from that. These were
7 exhibits that were entered as kind of the mass bulk entering
8 when the agent was testifying about all the screen shots he
9 took. We went ahead and entered them since he was here to lay
10 a foundation in case we wanted to use them later. He didn't
11 actually offer any testimony or explain what the screen shots
12 were about. The screen shots regarding some particular chats
13 where people were talking about actually molesting children.
14 So since they were not talked about, they were not explained
15 and there was no testimony about them and they were never
16 actually shown to the jury, we did not include those in the
17 exhibits that were to be submitted into JERS. So I just
18 wanted to let the Court and Mr. Adolf know that since the JERS
19 system will not match the actual exhibit list.

20 THE COURT: All right. Thank you.

21 The special allegation as to defendant Michael
22 Fluckiger was also taken out or redacted.

23 MS. RANDALL: Thank you, Your Honor.

24 THE COURT: Now we will be -- assuming the jury
25 comes back with a verdict of guilty for the purposes of this

1 announcement, I hope you all will look at the forfeiture
2 instructions and be ready if it becomes pertinent to undertake
3 the, hopefully, brief hearing on forfeiture.

4 MR. BAIN-CREED: We will, Your Honor. We anticipate
5 a very brief argument there.

6 MR. ADOLF: Your Honor, there was one remaining
7 matter which was my motion, if indeed there is a conviction
8 and I guess it would be after the forfeiture, to poll the jury
9 on their views of punishment. I submitted it as a one
10 question -- as a one question sheet that would say, "What do
11 you -- How much time do you believe the defendant should be
12 sentenced to in months?"

13 THE COURT: Yeah. I'm going to deny that request.

14 MR. ADOLF: I understand, Your Honor.

15 (Lunch recess.)

16 (The jury begins deliberations at 2:04.)

17 (The jury knocks with a question.)

18 (Question No. 1 was answered on paper to the jury.)

19 (The jury knocks at 3:31:)

20 (The defendant is present.)

21 (The jury was returned to the courtroom.)

22 THE COURT: All right. The Court received a note
23 from the jury as follows:

24 "Judge, Count Four refers to February 1, 2015. And
25 we need the specific exhibit associated with Count Four.

1 Please provide the exhibit."

2 And that is your request and that is not on the
3 system available in the jury room so we brought you out for
4 the purpose of showing that exhibit.

5 Would the Government state the number of that
6 exhibit?

7 MS. RANDALL: Yes, Your Honor. This is Government's
8 Exhibit 24.

9 THE COURT: All right. The alternates are present.
10 Yes, ma'am.

11 MS. RANDALL: I was going to ask, do you want me to
12 zoom in and scroll through the exhibit or how would you like
13 me to display it?

14 JUROR NO. 9: (Indicating.)

15 THE COURT: Yes, sir.

16 JUROR NO. 9: We just need to see the top lines on
17 the exhibit, sir.

18 THE COURT: All right.

19 JUROR NO. 9: Next to the avatar.

20 THE COURT: Show the top part then.

21 MS. RANDALL: If I could clarify, of the -- there
22 are two different avatars. I'll show the first one and then
23 the second one.

24 JUROR NO. 9: Okay.

25 THE COURT: Would you like to have it blown up any?

1 JUROR NO. 9: I think everybody is good, sir.

2 THE COURT: All right. Very well. If that
3 satisfies the question, then you may return to the jury room.

4 JUROR NO. 9: Thank you.

5 THE COURT: Thank you, all.

6 We'll be in recess. And thank you all for
7 continuing to be with us.

8 (The jury is excused and continues deliberations
9 from 3:36 until 4:00.)

10 THE COURT: Did the jury announce they have a
11 verdict?

12 THE DEPUTY CLERK: They did, Your Honor.

13 THE COURT: Are the parties ready to announce the
14 verdict?

15 MS. RANDALL: Yes, sir.

16 MR. ADOLF: Yes, Your Honor.

17 THE COURT: May we have the jury and the alternates,
18 also.

19 (The jury was returned to the courtroom.)

20 THE COURT: All right, sir.

21 The jury is now seated in the jury box along with
22 the alternates.

23 Did the jury reach a verdict?

24 THE JURY: Yes, sir.

25 THE COURT: Was it unanimous as to all the various

1 decisions that have been entered on the verdict sheet?

2 THE JURY: Yes, sir.

3 THE COURT: And did you sign it and date it?

4 THE JURY: Yes, sir.

5 THE COURT: All right. Madam Clerk, if you will
6 receive the verdict sheet, please.

7 (Juror No. 9 handing verdict sheet to the Deputy
8 Clerk.)

9 THE COURT: Okay. There's a couple of things we'll
10 need to address. First of all, the verdict sheet has an
11 instruction on page 2 which says:

12 "If you found that the offense of advertising child
13 pornography was a predicate offense, skip Count Two and
14 continue to Count Three."

15 So I'm going to ask that the jury go back to the
16 jury room and see if you can't amend your verdict sheet so
17 that that is complied with.

18 JUROR NO. 9: Yes, sir.

19 THE COURT: All right. Madam Clerk.

20 Anything for the Court concerning the supplementary
21 instruction that has been given to the jury?

22 MR. BAIN-CREED: No objection, Your Honor.

23 THE COURT: I take it the Government would want to
24 proffer some argument?

25 MR. BAIN-CREED: Yes, Your Honor, very brief. I

1 mean, probably ten minutes or less.

2 THE COURT: All right.

3 MR. BAIN-CREED: I'm not sure what the defense
4 anticipates proffering.

5 THE COURT: All right. You have no additional
6 evidence?

7 MR. BAIN-CREED: No, sir.

8 THE COURT: What about from the defendant?

9 MR. ADOLF: No additional evidence, Your Honor, just
10 very brief argument.

11 THE COURT: All right. Thank you.

12 Just for consistency sake, we'll let the Government
13 have a brief opportunity to respond to defense argument.

14 MR. BAIN-CREED: Thank you, Your Honor.

15 (The jury knocks at 4:08 and was returned to the
16 courtroom.)

17 THE COURT: Okay. Did the jury respond to the
18 Court's request?

19 JUROR NO. 9: Yes, Your Honor.

20 THE COURT: Did the additional adjustment you made
21 to the verdict sheet come with the unanimity of all the
22 jurors?

23 JUROR NO. 9: Yes, Your Honor.

24 THE COURT: All right. Thank you. Madam Clerk.

25 All right. And you have initialed the change on

1 page 2?

2 JUROR NO. 9: Yes, Your Honor.

3 THE COURT: And that is the verdict of the jury, so
4 say you all.

5 THE JURY: (Nodding head affirmatively.)

6 THE COURT: I see affirmative nods there. Thank
7 you.

8 Now then, members of the jury, you have one other
9 item to take care of, not to be jocular about it, but it isn't
10 5:00 yet. The horn hasn't sounded. We have one short item
11 for your attention. You have labored long and hard, but at
12 this stage of the proceedings this additional responsibility
13 becomes necessary in view of the verdict.

14 The defendant has been found guilty of the Counts
15 One through Seven, except for Two. I must now ask you certain
16 questions concerning property the Government alleges is
17 subject to forfeiture.

18 I have some short instructions, the parties will
19 have an opportunity to say very short words about it, then you
20 will be asked to deliberate on this matter as well. And
21 there's, likewise, a short verdict sheet for the forfeiture
22 aspect of the case.

23 In this regard, I instruct you that your previous
24 verdict that defendant is guilty on those counts is binding on
25 this part of the proceeding and you must not seek to discuss

1 or determine anew whether the defendant is guilty or not
2 guilty of those charges. You've already made your findings
3 there.

4 I further instruct you that what happens to any
5 property that is declared forfeited is absolutely a matter for
6 the Court to decide, that is, what happens to the property.
7 You should not consider what might happen to the property in
8 determining whether the property is subject to forfeiture.

9 In this connection you should disregard any claims
10 that any other persons may have to the property. The
11 interests that other persons may have in the property will be
12 taken into account by the Court at a later time.

13 Similarly, any claims that the forfeiture of the
14 property would constitute excessive punishment would be taken
15 into account by the Court at a later time.

16 What you must now decide is whether the defendant
17 must forfeit certain property that the Government claims is
18 subject to forfeiture to the United States because of its
19 connection to the offenses in Counts One and Two through
20 Seven.

21 The first, the real property at, excuse me, 3570
22 15th Avenue SW, Naples, Florida; next, one ASUS Laptop, serial
23 number ELN0CV0907390L2 and identified as Government's Exhibit
24 Number 66; and lastly, one Cruzer 128 thumb drive and
25 identified as Government's Exhibit Number 68.

1 Forfeiture means that, as part of the penalty for
2 engaging in certain criminal activity, Defendant loses any
3 ownership or interest he has or claims to have in certain
4 property. Under federal law, any person who is convicted of
5 violating Title 18 U.S. Code Section 2251 or Section 2252A
6 shall forfeit to the United States any real property and
7 personal property used or intended to be used to commit or to
8 promote the commission of that person's Section 2251 or 2252A
9 offenses.

10 In order to determine whether forfeiture is merited
11 under this law, you will be asked to return a Special Verdict
12 of Forfeiture on whether there is a nexus between the Section
13 2251 and Section 2252A offenses, and the defendant's residence
14 in Naples, Florida, and the computer items identified in these
15 instructions and on the special verdict sheet that I will
16 provide to you.

17 "Nexus" means that there is a substantial connection
18 between the properties and the crime. A substantial
19 connection may be established by showing that the use of the
20 property made the crime less difficult or more or less free
21 from instruction or hinderance, or otherwise promoted the
22 defendant's ability to complete the offense.

23 To be forfeitable the property need not be used
24 exclusively for illegal activity. Property that is used the
25 vast majority of the time for legitimate purposes may

1 nevertheless be forfeited if it promotes the commission of a
2 criminal offense.

3 You must consider what verdict to render on whether
4 there is a nexus between the defendant's residence, the
5 computer items, and the offenses of conviction of which you
6 have already found defendant guilty.

7 All of my previous instructions regarding direct and
8 circumstantial evidence, credibility of witnesses, and duty to
9 deliberate apply with respect to your verdict regarding
10 forfeiture.

11 However, in deliberating and deciding your verdict
12 regarding forfeiture, I instruct you that the Government need
13 only prove by a preponderance of the evidence whether there is
14 a connection or nexus between the offense and the specific
15 properties identified.

16 When I say the "offense" I refer, of course, to all
17 the ones -- counts of conviction. The Government is not
18 required to prove a nexus beyond a reasonable doubt. I
19 instruct you that, in order for the Government to establish by
20 a preponderance of the evidence the nexus of specific
21 properties to the offenses, the Government must prove that it
22 is more likely than not that the specific properties were used
23 or intended to be used to commit or to promote the commission
24 of a Section 2251 or Section 2252A offenses. In other words,
25 "preponderance of the evidence" means that the Government's

1 evidence, when considered and compared with that opposed to
2 it, has more convincing force and produces in your minds a
3 belief that there is a nexus between the specifically
4 identified properties and Defendant's crimes. Your job is to
5 determine whether the nexus is more likely so than not.

6 While deliberating, you may consider any evidence,
7 including but not limited to testimony, offered by the parties
8 at any time during this trial. That includes, of course,
9 witnesses -- witness testimony and exhibits. There won't be
10 any new evidence at this time. You would just use the
11 evidence you've already heard.

12 You must reach a unanimous verdict as to the
13 questions on the Special Verdict Form. Everyone must agree to
14 any "Yes" or "No" answer. Everyone must agree on whether the
15 preponderance of the evidence proves that the property
16 identified on the verdict form was used or intended to be used
17 to commit or to promote the commission of the Counts One and
18 Three through Seven offenses in violation of Title 18,
19 Section 2251 and 2252A.

20 As I said, a Special Verdict form has been prepared
21 for you. The Special Verdict form lists those three
22 properties that I read out which the Government asserts are
23 subject to forfeiture.

24 You may answer by simply putting an "X" or check
25 mark in the space provided next to the words "Yes" or "No" on

1 each question.

2 Now then, would the Government have any words of
3 argument in respect to this aspect of the trial?

4 MR. BAIN-CREED: Yes, sir, Your Honor. May it
5 please the Court.

6 THE COURT: All right.

7 MR. BAIN-CREED: Members of the jury, I'm a little
8 late coming to the trial, but I work with Ms. Randall. My
9 name is Benjamin Bain-Creed. I'm a forfeiture attorney. I
10 handle this phase of the trial.

11 Now that you have returned guilty verdicts,
12 effectually, as the Judge explained, what the Government is
13 asking that you return a verdict that the 3570 15th Avenue SW,
14 Naples, Florida, the ASUS Laptop be subject to forfeiture
15 because they were used in the crimes. The way you fulfill
16 your duty in this regard is, you determine whether there's a
17 nexus between that property and the crime.

18 "Nexus" is a fancy legal word for connection. You
19 apply a preponderance of the evidence, burden of proof being
20 more likely than not. The burden of proof is a lesser burden
21 than beyond a reasonable doubt. And you determine whether
22 it's more likely than not that those properties were used in
23 the crimes.

24 So I'm just going to ask you to look -- I'm going to
25 make it very brief and ask you to look back to the same things

1 Ms. Randall asked you to look at in the closing argument.
2 Look at the fact the evidence shows the defendant accessed the
3 email account he used to set up PlayPen from his Florida
4 residence, from the privacy of that residence. Look at the
5 evidence that he accessed PayPal, used PayPal to operate
6 Playpen. That was also from the privacy of his residence.
7 Look at the evidence that he accessed the PlayPen server on
8 multiple occasions prior to the search, from the privacy of
9 his Florida residence.

10 And look at the search itself. When law enforcement
11 showed up his -- he was in the privacy of his residence. His
12 computer was on. He was on the PlayPen server. He was logged
13 in as the administrator. The thumb drive was in the computer
14 with backup copies for purposes of using PlayPen, all in the
15 privacy of his residence. Important to his crime is his
16 residence which was used in the crimes, as well as the
17 computer items.

18 In fact, the privacy is so important that he tried
19 to prevent the police from coming in, which is not something
20 he could do at Starbucks or the public library. This was
21 private, just like Tor provided anonymity, the residence
22 provided anonymity.

23 We would ask you to return a verdict of forfeiture
24 on that residence, on the thumb drive, and on the computer.
25 Thank you very much.

1 THE COURT: Mr. Adolf.

2 MR. ADOLF: Thank you, Your Honor.

3 Folks, you've convicted Mr. Chase of very serious
4 crimes. You're aware of that. I respect that decision. I
5 know you do some hard work back there. Now the government is
6 trying to take his house on top of that. I'm not worried
7 about the computers. The house that you heard that he lived
8 in with his wife until her death, where they raised children.
9 That's because they say he used the house to commit the crime
10 because that's where he was sitting on the computer.

11 So I guess if you believe that, then I guess the
12 government could take the glasses that he wore while he was
13 sitting there on the computer. They could take the clothes
14 off his back, because they kept him warm while he sat there on
15 the computer. They could take his shoes, the clothes, the
16 food in the refrigerator that he was snacking on so he could
17 sit at the computer.

18 Is there any end to it? What does it even mean to
19 use something?

20 If your teenage daughter is caught smoking marijuana
21 in her bedroom, did she use your house to commit a drug crime?
22 Be very, very careful about the power that you give your
23 government, folks. It is not necessary to take his house
24 away, and it's not the law. So I'm asking you not to do it.
25 Thank you.

1 MR. BAIN-CREED: Just very briefly, members of the
2 jury, as the Judge has instructed you, it's the Judge's role
3 to determine whether a penalty is excessive.

4 Forfeiture is, in fact, a penalty in this case.
5 It's a penalty for a heinous crime involving thousands of
6 child pornography images that were made available to over
7 100,000 people worldwide. So, yes, it is a penalty.

8 But excessiveness arguments are for the Judge. Your
9 only role is to determine if there is a connection between the
10 house and the crimes. The government contends that connection
11 is clear. This is something the defendant did from the
12 privacy of his residence. He tried to keep law enforcement
13 out when they came in. That is not something they could do
14 other than in the privacy of his residence. We ask you to do
15 that. So we ask you to return a verdict of forfeiture. Thank
16 you.

17 THE COURT: Members of the jury, you heard the
18 arguments and the Court's instructions. The clerk will hand
19 you the verdict sheet. And I would appreciate it if you would
20 step into the jury room and take care of this last aspect of
21 the case.

22 (The jury was escorted from the courtroom at 4:21.)

23 THE DEPUTY CLERK: The Judge said to let you all
24 look at the verdict sheet.

25 THE COURT: We'll be polling the jury when they come

1 back as to both the offenses and the forfeiture.

2 MR. ADOLF: Yes, Your Honor.

3 (The jury knocks at 4:58:)

4 THE COURT: Did the jury indicate they reached a
5 verdict?

6 THE COURT SECURITY OFFICER: They did, Your Honor.

7 THE COURT: Are the parties ready to receive the
8 verdict?

9 MR. BAIN-CREED: Yes, Your Honor.

10 MR. ADOLF: Yes, Your Honor.

11 THE COURT: May we have the jury.

12 (The jury was returned to the courtroom at 5:00.)

13 THE COURT: All right. The jury is seated. Did the
14 jury reach a verdict on the forfeiture issue?

15 JUROR NO. 9: Yes, sir, Your Honor.

16 THE COURT: Did you fill in the verdict sheet
17 accordingly?

18 JUROR NO. 9: Yes, sir.

19 THE COURT: Was it a unanimous decision?

20 JUROR NO. 9: Yes, sir.

21 THE COURT: All right. Madam Clerk, we'll receive
22 the verdict sheet.

23 Okay. Madam Clerk, if you would please announce or
24 publish the verdict. And members of the jury, please listen
25 up as the clerk does so because you'll be asked in just a

1 moment if that is and does remain your verdict.

2 THE DEPUTY CLERK: Members of the jury, you have
3 found as follows:

4 As to Defendant, Steven W. Chase:

5 "We, the jury, return the following Verdict as to
6 the charges contained in the Second Superseding Bill of
7 Indictment against Defendant, Steven W. Chase:

8 "Count One:

9 "As to Count One, we the jury, find the Defendant,
10 Steven W. Chase guilty of engaging in a Child Exploitation
11 Enterprise between or about August 19, 2014 and March 4, 2015,
12 as alleged in Count One of the Second Superseding Bill of
13 Indictment.

14 "Special Interrogatory 1:

15 "Predicate Offenses Supporting Guilty Verdict on
16 Count One:"

17 As marked, "Advertising Child Pornography between on
18 or about August 19, 2014 and March 4, 2015.

19 "Transporting or Shipping Child Pornography on or
20 about February 1, 2015.

21 "Transporting or Shipping Child Pornography on or
22 about October 12, 2014.

23 "Transporting or Shipping Child Pornography on or
24 about September 26, 2014.

25 "Possession of Child Pornography between on or about

1 August 19, 2014 and February 17th, 2015.

2 "If you found that the offense of Advertising Child
3 Pornography was a predicate offense, skip Count Two and
4 continue to Count Three.

5 "Count Two: No verdict.

6 "Count Three.

7 "As to Count Three, we the jury find the Defendant,
8 Steven W. Chase, guilty of Advertising Child Pornography
9 between on or about April 14, 2014 and March 4, 2015, as
10 alleged in Count Three of the Second Superseding Bill of
11 Indictment.

12 "Count Four.

13 "As to Count Four, we the jury find the Defendant,
14 Steven W. Chase, guilty of Transporting or Shipping Child
15 Pornography on or about February 1, 2015, as alleged in Count
16 Four of this Second Superseding Bill of Indictment.

17 "Count Five.

18 "As to Count Five, we the jury find the Defendant,
19 Steven W. Chase, guilty of Transporting or Shipping Child
20 Pornography on or about October 12, 2014, as alleged in Count
21 Five of the Second Superseding Bill of Indictment.

22 "Count Six.

23 "As to Count Six, we the jury find the Defendant,
24 Steven W. Chase guilty of Transporting or Shipping Child
25 Pornography, on or about September 26, 2014, as alleged in

1 Count Six of the Second Superseding Bill of Indictment.

2 "Count Seven.

3 "As to Count Seven, we the jury find the Defendant,
4 Steven W. Chase guilty of Possession of Child Pornography,
5 between on or about August 19, 2014 and February 17th, 2015,
6 as alleged in Count Seven of the Second Superseding Bill of
7 Indictment.

8 "As to Question 1:

9 "Age of Minor in Child Pornography:

10 "Concerning the Child Pornography possessed by
11 Defendant relevant to Count Seven, did Defendant know that the
12 child pornography involved a minor who had not attained the
13 age of 12 years of age?

14 "Yes.

15 "Special Verdict Form Forfeiture.

16 "We, the jury, unanimously find by a preponderance
17 of evidence as follows:

18 "Count One Forfeiture:

19 "Was the real property at 3570 15th Avenue SW,
20 Naples, Florida, used or intended to be used to commit or to
21 promote the commission of the Count One offense in violation
22 of 18 U.S.C. Section 2252A(g)?

23 "Yes.

24 "2: Was the ASUS Laptop, serial number
25 ELN0CV0907390L2, and identified as Government's Exhibit Number

1 66, used or intended to be used to commit or to promote the
2 commission of the Count One offense in the violation of 18
3 U.S.C. Section 2252A(g)?

4 "Yes.

5 "3: Was the Cruzier 128GB thumb drive, and
6 identified as Government's Exhibit Number 68, used or intended
7 to be used to commit or promote the commission of the Count
8 One offense in violation of 18 U.S.C. Section 2252A(g)?

9 "Yes.

10 "Count Three Forfeiture:

11 "1. Was the real property at 3570 15th Avenue SW,
12 Naples, Florida, used or intended to be used to commit or to
13 promote the commission of the Count Three offense in violation
14 of 18 U.S.C. Section 2251(d)?

15 "Yes.

16 "2. Was the ASUS Laptop, serial number
17 ELN0CV0907390L2, and identified as Government's Exhibit 66,
18 used or intended to be used to commit or to promote the
19 commission of the Count Three offense in violation of 18
20 U.S.C. Section 2251(d)?

21 "Yes.

22 "Was the Cruzier 128GB thumb drive, and identified as
23 Government's Exhibit 68, used or intended to be used to commit
24 or to promote the commission of the Count Three offense in
25 violation of 18 U.S.C. Section 2251(d)?

1 "Yes."

2 THE COURT: Madam Clerk, poll the jury.

3 THE DEPUTY CLERK: Juror No. 1, was this your
4 verdict; is it still your verdict?

5 JUROR NO. 1: Yes.

6 THE DEPUTY CLERK: Juror No. 2, was this your
7 verdict; is it still your verdict?

8 JUROR NO. 2: Yes.

9 THE DEPUTY CLERK: Juror No. 3, was this your
10 verdict; is it still your verdict?

11 JUROR NO. 3: Yes.

12 THE DEPUTY CLERK: Juror No. 4, was this your
13 verdict; is it still your verdict?

14 JUROR NO. 4: Yes.

15 THE DEPUTY CLERK: Juror No. 5, was this your
16 verdict; is it still your verdict?

17 JUROR NO. 5: Yes.

18 THE DEPUTY CLERK: Juror No. 6, was this your
19 verdict; is it still your verdict?

20 JUROR NO. 6: Yes.

21 THE DEPUTY CLERK: Juror No. 7, was this your
22 verdict; is it still your verdict?

23 JUROR NO. 7: Yes.

24 THE DEPUTY CLERK: Juror No. 8, was this your
25 verdict; is it still your verdict?

1 JUROR NO. 8: Yes.

2 THE DEPUTY CLERK: Juror No. 9, was this your
3 verdict; is it still your verdict?

4 JUROR NO. 9: Yes.

5 THE DEPUTY CLERK: Juror No. 10, was this your
6 verdict; is it still your verdict?

7 JUROR NO. 10: Yes.

8 THE DEPUTY CLERK: Juror No. 11, was this your
9 verdict; is it still your verdict?

10 JUROR NO. 11: Yes.

11 THE DEPUTY CLERK: Juror No. 12, was this your
12 verdict; is it still your verdict?

13 JUROR NO. 12: Yes.

14 THE COURT: Thank you, Madam Clerk.

15 Will there be anything further for the jury before
16 they are released?

17 MS. RANDALL: Not from the government, Your Honor.
18 Thank you.

19 MR. ADOLF: No, Your Honor.

20 THE COURT: All right. Members of the jury, I want
21 to thank all of you and, also, of course, the alternates. In
22 civil cases alternates deliberate alongside civil juries but
23 we're not able to do that in criminal cases. You necessarily
24 serve a very important position should you be needed to go in
25 to replace a juror with some issue and couldn't continue

1 deliberating. All of you deserves our thanks. We appreciate
2 your service to the Court. If you have any questions about
3 your service, call the Clerk on the third floor or the
4 telephone number you've been given. I asked you not to talk
5 about the case until it was over. Now it is over. If one of
6 the attorneys or anyone else asks you about the case or anyone
7 at home, you're entirely free to discuss it if you wish, but
8 you're under no obligation to do so if you would rather not.

9 (The jury was escorted from the courtroom at 5:09.)

10 THE COURT: All. The jury has departed.

11 Mr. Chase, the jury having found as it did --

12 JUROR: Excuse me. I forget my umbrella.

13 THE COURT: Okay. Feel free to come forward and
14 pick it up.

15 JUROR: It's on top.

16 THE COURT: You thought of it in a timely manner.

17 (The juror has exited the courtroom.)

18 THE COURT: Okay. Mr. Chase, the jury finding as
19 they did, the remaining matter will be the sentencing hearing.
20 Between now and the time of the sentencing hearing you, and I
21 would say the probation officer, will be preparing a
22 presentence report. And you'll be asked to provide an
23 interview for that report if you see fit, and your attorney
24 may be with you at the time of such an interview if you wish.

25 THE DEFENDANT: (Nodding head affirmatively.)

1 THE COURT: Then at the time of sentencing you will
2 have had a copy of the presentence report for at least 35
3 days. That will give you and your attorney time to go over it
4 carefully and make sure it's accurate. And your attorney may
5 file objections to it if it is not, and those objections would
6 be resolved by the Court. At the time of sentencing you and
7 your attorney will both be having the opportunity to speak to
8 the Court about the matter of an appropriate sentence, and
9 evidence may be offered at that time also if that is in order.

10 Do you have any question about these matters?

11 THE DEFENDANT: No, Your Honor, I don't.

12 THE COURT: All right.

13 THE DEFENDANT: Everything is covered.

14 THE COURT: All right, sir.

15 Anything further before the Court adjourns for the
16 evening?

17 MR. BAIN-CREED: No, Your Honor.

18 MR. ADOLF: No, Your Honor.

19 THE COURT: All right.

20 (The matter is concluded at 5:14.)

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF OFFICIAL REPORTER

4 I, Laura Andersen, Federal Official Court Reporter,
5 in and for the United States District Court for the Western
6 District of North Carolina, do hereby certify that pursuant to
7 Section 753, Title 28, United States Code that the foregoing
8 is a true and correct transcript of the stenographically
9 reported proceedings held in the above-entitled matter and
10 that the transcript page format is in conformance with the
11 regulations of the Judicial Conference of the United States.

12 Dated this the 14th day of August, 2017.

13 S/Laura Andersen
14 Laura Andersen, RMR
15 Federal Official Court Reporter
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